

IOWA COURT RULES

FIFTH EDITION

May 2012 Supplement



Published under the authority of Iowa Code section 2B.5(2).

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PREFACE

The Fifth Edition of the Iowa Court Rules was published in July 2009 pursuant to Iowa Code section 2B.5(2). Subsequent updates to the Iowa Court Rules, as ordered by the Supreme Court, are published in electronic format only and include chapters that have been amended or adopted.

The Iowa Court Rules and related court documents are available on the Internet at <http://www.legis.state.ia.us/asp/CourtRules/pubDateListing.aspx>.

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Inquiries: Inquiries regarding access to the Iowa Court Rules should be directed to the Legislative Services Agency's Computer Services Division Help Desk at (515)281-6506.

Citation: The rules shall be cited as follows:

Chapter 1	Iowa R. Civ. P.
Chapter 2	Iowa R. Crim. P.
Chapter 5	Iowa R. Evid.
Chapter 6	Iowa R. App. P.
Chapter 32	Iowa R. of Prof'l Conduct
Chapter 51	Iowa Code of Judicial Conduct

All other rules shall be cited as "Iowa Ct. R."

Supplements: Supplements to the Fifth Edition of the Iowa Court Rules have been issued as follows:

August 2009	December 2010
September 2009	February 2011
October 2009	January 2012
November 2009	
December 2009	
January 2010	
February 2010	
March 2010	
May 2010	
June 2010	
August 2010	
September 2010	

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Changes in this supplement

Rule 7.6(4)	Amended	Rule 34.23, Form 1	Amended
Rule 22.28.....	Amended	Rules 35.8 to 35.28	Amended
Rule 31.1(1).....	Amended	Rule 36.10.....	Amended
Rule 31.9.....	Amended	Rule 39.9(1).....	Amended
Rule 31.11.....	Amended	Rule 39.15.....	Amended
Rule 32:1.3 comment [5]	Amended	Rule 41.3(2).....	Amended
Rule 32:7.4(a).....	Amended	Rule 41.11.....	Amended
Rule 32:8.5 comment [1]	Amended	Rule 42.1.....	Amended
Rules 34.4 to 34.7	Amended	Rule 45.2.....	Amended

INSTRUCTIONS FOR UPDATING THE IOWA COURT RULES

Replace Chapter 7

Replace Chapter 22

Replace Chapters 31 and 32

Replace Chapters 34 to 36

Replace Chapter 39

Replace Chapters 41 and 42

Replace Chapter 45

CHAPTER 7
RULES OF PROBATE PROCEDURE

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CHAPTER 7 RULES OF PROBATE PROCEDURE

Rule 7.1 Effective removal order — turnover. When the court orders the removal of a fiduciary under Iowa Code section 633.65, such order, unless expressly providing otherwise, shall be effective as a turnover order under Iowa Code section 633.70, and without further order the fiduciary so removed shall turn over all personal property, money or securities to or for the fiduciary's successor at the clerk's office within five days after such order is filed.

[Court Order November 16, 1965; November 14, 1979; Report November 9, 2001, effective February 15, 2002]

Rule 7.2 Fees in probate.

7.2(1) Every report or application requesting an allowance of fees for personal representatives or their attorneys shall be written and verified as provided in Iowa Code section 633.35.

7.2(2) When fees for ordinary services are sought pursuant to Iowa Code sections 633.197 and 633.198, proof of the nature and extent of responsibilities assumed and services rendered shall be required. Unless special circumstances should be called to the court's attention, the contents of the court probate file may be relied upon as such proof. In determining the value of gross assets of the estate for purposes of Iowa Code section 633.197, the court shall not include the value of joint tenancy property excluded from the taxable estate pursuant to Iowa Code section 450.3(5) or the value of life insurance payable to a designated beneficiary.

7.2(3) When an allowance for extraordinary expenses or services is sought pursuant to Iowa Code section 633.199, the request shall include a written statement showing the necessity for such expenses or services, the responsibilities assumed, and the amount of extra time or expense involved. In appropriate cases, the statement shall also explain the importance of the matter to the estate and describe the results obtained. The request may be made in the final report or by separate application. It shall be set for hearing upon reasonable notice, specifying the amounts claimed, unless waivers of notice identifying the amounts claimed are filed by all interested persons. The applicant shall have the burden of proving such allowance should be made.

7.2(4) One half of the fees for ordinary services may be paid when the federal estate tax return, if required, and Iowa inheritance tax return, if required, are prepared. When a federal estate tax return is not required, the one-half fee may be paid when the Iowa inheritance tax return is prepared or, when it is not required, when the probate inventory required by the Iowa Probate Code is filed. The remainder of the fees may be paid when the final report is filed and the costs have been paid. The schedule for paying fees may be different when so provided by order of the court for good cause.

7.2(5) Every report or application requesting compensation for other fiduciaries and their attorneys pursuant to Iowa Code section 633.200 shall be written and verified.

7.2(6) When compensation has been allowed to a person employed by the fiduciary or attorney to assist the estate pursuant to Iowa Code section 633.84, the request for fees by the fiduciary shall disclose the identity of such person and the amount allowed, for consideration by the court in determining fees for the fiduciary pursuant to Iowa Code section 633.86.

[Court Order November 14, 1979; Report September 5, 1985, effective November 15, 1985; November 9, 2001, effective February 15, 2002; November 23, 2004, effective February 1, 2005]

Rule 7.3 District court rules in probate. A district court rule of probate and administration shall not be valid until it has been filed with the clerk of the supreme court and approved by that court.

[Court Order November 14, 1979; Report November 9, 2001, effective February 15, 2002]

Rule 7.4 Report of referee. A report of a referee in probate shall substantially comply with the form that accompanies these rules.

[Report November 9, 2001, effective February 15, 2002]

Rule 7.5 Referees in probate.

7.5(1) Duties.

a. Referees as masters. Unless otherwise directed by the court, a referee in probate appointed by the district court pursuant to Iowa Code section 633.20, and determined by the court to be qualified to serve as a master, shall have the powers to perform all the duties required of masters appointed by

the court in civil actions (Iowa Rs. Civ. P. 1.935 - 1.942) and shall examine all reports, applications and petitions in probate and in trusts requiring action by the court.

b. Other referees. A referee in probate not determined by the court to be qualified to serve as a master shall have authority to examine probate files to make the report provided by rule 7.4.

c. Referee reports. The report of the referee shall be in writing on a form which substantially complies with the form that accompanies these rules and shall contain such matters as the court may request as shown by the files and reports in the clerk's office. If the referee is authorized to act as a master, the report shall also contain recommendations of the referee as to what ought to be done relative to the reports when considered by the court. No final report will be approved until the report of the referee is presented to the court, it being contemplated that such presentation shall be made expeditiously and without delay.

d. Other duties. In addition to the powers and duties of the referee in probate prescribed by this rule, the referee shall perform such duties as the court may require.

7.5(2) Fees.

a. The referee shall be paid a fee for services as permitted under a schedule established under Iowa Code section 633.21, unless a referee and any assistant are appointed for the county for all matters in probate in the county and are paid an annual compensation.

b. Referee fees shall be taxed and collected by the clerk as other costs, and such fees shall be in addition to all other fees charged and collected by the clerk in probate matters as required by Iowa Code section 633.31.

c. In such cases where a referee and any assistant are paid an annual compensation, any excess of fees remaining after payment of such other expenses as are approved by the court shall be disbursed pursuant to the Code.

[Court Order December 18, 1980, effective January 1, 1981; Report November 9, 2001, effective February 15, 2002]

Rule 7.6 Reports of delinquent inventories or reports.

7.6(1) The clerk's report to the presiding judge required by Iowa Code section 633.32, of all delinquent inventories or reports in estates, trusts, guardianships or conservatorships shall contain, in addition to the information required by Iowa Code section 633.32(3), a copy of each delinquency notice and, if they do not appear on the face of the delinquency notice, the following information for each delinquent inventory or report:

- a.* The probate number of the matter.
- b.* The title of the matter.
- c.* An indication of whether the matter is an estate, trust, guardianship, or conservatorship.
- d.* The name and address of the fiduciary.
- e.* The name and address of the attorney, if any, for the fiduciary.
- f.* The type of delinquent inventory or report.
- g.* The date notice of delinquency was given.
- h.* A statement that the required report or inventory or an order extending time for a specified period was not filed within 60 days after the giving of notice of delinquency.
- i.* The date the matter was opened.
- j.* The name of the last paper filed by the fiduciary or attorney and the date of filing such paper.
- k.* The number, including "zero" if appropriate, of previous delinquency notices given in the matter and ignored.

7.6(2) The clerk shall submit a copy of the report to the chief judge of the judicial district and the state court administrator in addition to the presiding judge as required by Iowa Code section 633.32(2). If an order extending time for a specified period was filed but not complied with, the clerk shall proceed as in instances in which an order is not filed.

7.6(3) The state court administrator shall utilize the reports in the discharge of the duties prescribed in Iowa Code section 602.1209 and, in addition, shall prepare a list of the attorneys for fiduciaries who have received and ignored a notice of delinquency. The state court administrator shall transmit the list of attorneys, together with other relevant information, to the Iowa Supreme Court Attorney Disciplinary Board and to the Client Security Commission.

7.6(4) The Iowa Supreme Court Attorney Disciplinary Board, as a commission of the supreme court pursuant to Iowa Ct. R. 35.2, shall communicate with each attorney licensed to practice law in Iowa whose name appears on the list transmitted to the board pursuant to rule 7.6(3). If the board determines there is reasonable cause to believe an attorney for a fiduciary has violated Iowa R. of

Prof'l Conduct 32:1.3 or 32:3.2 for failure to file a required inventory or report within 60 days after receiving notice of delinquency, or within an extension of time for a specified period granted by order, the board shall initiate appropriate disciplinary action. The board chairperson shall include the number of attorneys investigated and complaints initiated and processed pursuant to this rule, a synopsis of each such complaint, and the disposition thereof, in the annual board report to the supreme court required by Iowa Ct. R. 35.25.

7.6(5) The assistant court administrator of the disciplinary system is authorized to inquire into the status of any delinquent probate inventory or report.

[Court Order March 13, 1980; October 20, 1981; 1983 Iowa Acts, chapter 186, §10151; January 17, 1995, effective April 3, 1995; Report November 9, 2001, effective February 15, 2002; August 29, 2002, effective December 1, 2002; April 20, 2005, and July 1, 2005, effective July 1, 2005; February 20, 2012]

Rule 7.7 Interlocutory report. If the final report of the personal representative required by Iowa Code section 633.477 is not filed within 18 months after the date of the second publication of the notice to creditors, the personal representative shall at that time file an interlocutory report in accordance with Iowa Code section 633.469. The report shall identify the work remaining to be done in the estate and shall include an estimate of the period within which the work will be completed. The personal representative shall provide copies of the report to all interested parties by mailing, and proof of mailing shall be filed with the clerk. An order of the court approving the report shall not be required unless hearing on the report is held upon request of the personal representative or an interested party. The provisions of Iowa Code section 633.32 and rule 7.6 shall apply to the report required by this rule.

[Report August 22, 1985, effective November 1, 1985; November 9, 2001, effective February 15, 2002]

Rules 7.8 to 7.10 Reserved.

Rule 7.11 Forms.

Rule 7.11 — Form 1: Report of Referee.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE ESTATE OF _____, Deceased.	REPORT OF REFEREE Probate No. _____
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COMES NOW the duly appointed Referee and reports to the Court as follows:
The _____ Report has been filed in this Estate. The Referee has examined said Report and reports to the Court as follows: (All questions must be answered. If "yes" or "no" is not appropriate, check "N/A".)

- | | | | |
|---|-----------|----------|-----------|
| 1. Notice of Appointment published: | YES _____ | NO _____ | N/A _____ |
| 2. Affidavit of mailing notice required by: | | | |
| (A) Iowa Code sections 633.230 and 633.304; | YES _____ | NO _____ | N/A _____ |
| (B) Iowa Code sections 633.231 and 633.304A: (medical assistance claims) | YES _____ | NO _____ | N/A _____ |
| 3. Fiduciaries fees ordered or waived and affidavit of compensation filed: | YES _____ | NO _____ | N/A _____ |
| 4. Attorney fees ordered and affidavit of compensation filed: | YES _____ | NO _____ | N/A _____ |
| (A) Itemization was requested and provided: | YES _____ | NO _____ | N/A _____ |
| (B) If not, statement required by Iowa Code section 633.477(11) was made: | YES _____ | NO _____ | N/A _____ |
| 5. Income tax acquittance filed: | YES _____ | NO _____ | N/A _____ |
| 6. Inheritance tax clearance filed or certification required by Iowa Code section 450.58 made: | YES _____ | NO _____ | N/A _____ |
| 7. A list of distributees is shown: | YES _____ | NO _____ | N/A _____ |
| 8. A description of real estate is shown: | YES _____ | NO _____ | N/A _____ |
| 9. Certificates of change of title to real estate, as required: | YES _____ | NO _____ | N/A _____ |
| 10. All claims filed have been paid, disallowed, or released: | YES _____ | NO _____ | N/A _____ |
| 11. Notice of hearings on this Report waived: | YES _____ | NO _____ | N/A _____ |
| (A) If not waived, proper proof of service of notice is on file: | YES _____ | NO _____ | N/A _____ |
| 12. Accounting is waived: | YES _____ | NO _____ | N/A _____ |
| 13. Court costs have been paid: | YES _____ | NO _____ | N/A _____ |
| 14. Election filed by or for surviving spouse under section 633.236: | YES _____ | NO _____ | N/A _____ |
| 15. Receipts for all specific bequests: | YES _____ | NO _____ | N/A _____ |
| 16. Federal estate tax closing letter and proof of payment is on file (not required for closing): | YES _____ | NO _____ | N/A _____ |
| 17. Remarks: | _____ | | |

Dated this _____ day of _____, 20 ____.

Referee in Probate

[Court Order November 14, 1979; December 3, 1981; November 14, 1984, effective November 26, 1984; Report September 5, 1985, effective November 15, 1985; February 18, 1987, effective July 1, 1987; September 23, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; July 23, 2003, effective October 1, 2003; November 30, 2005, effective March 1, 2006; April 11, 2008, effective July 1, 2008]

Rule 7.11 — Form 2: Initial/Annual/Final Report of Guardian and Order.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF _____	Probate No. _____ (check one) <input type="checkbox"/> INITIAL REPORT <input type="checkbox"/> ANNUAL REPORT <input type="checkbox"/> FINAL REPORT AND ORDER
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The undersigned duly appointed and qualified guardian in the above-entitled matter, states to the court:

1. This report covers the period from _____, 20____, to _____, 20____.
2. The current mental and physical condition of the ward is:
3. The present living arrangement of the ward, including a description of residence where the ward has resided during the reporting period is (indicate with whom ward resided at each residence):
4. The following is a summary of the medical, educational, vocational, and other professional services provided for the ward:
5. The following is a description of the guardian's visits with and activities on behalf of the ward:
6. (On initial report only.) The ward's date of birth is: _____.
7. The ward is: Single _____ Married _____ Divorced _____.
8. If the ward is a minor, names and addresses of parents:
9. It is recommended the guardianship be: continued _____; terminated _____.
If termination is recommended, give reason: (A hearing may be required on the matter of termination.)
10. Other information requested by the court or useful in the opinion of the guardian:
11. Final court costs (have) (have not) been paid.

Guardian

Address

Telephone Number

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Guardian

Address

(NOTE: Bank statements, checks, receipts, stubs, and other items evidencing receipt of funds and payment must be available to the court on demand.)

ORDER

The above (initial) (annual) (final) report is approved and the guardianship of said ward shall be (continued) (terminated, guardian discharged, bond released) (set for hearing on matter of termination).

Hearing date is: _____, 20____ at _____ o'clock ____ .m., at _____.

Dated: _____, 20____.

Judge of the _____ Judicial District
Referee in Probate

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; March 10, 1987, effective July 1, 1987; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 3: Initial Report of Conservator and Inventory.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

**INITIAL REPORT OF
CONSERVATOR AND
INVENTORY**

The undersigned duly appointed and qualified conservator states as follows:

1. The ward's real and personal property as of the date your conservator was appointed and the valuation of each item is itemized on the schedules attached hereto, and a summary of such schedules is as follows:

<u>Conservatorship Assets</u> (Attach Descriptions)	<u>Total Value</u>
A. Real Estate	\$ _____
B. Stocks and Bonds	\$ _____
C. Mortgages, Notes, Deposits and Cash	\$ _____
D. Life Insurance	\$ _____
E. Jointly Owned Property	\$ _____
F. Miscellaneous Property	\$ _____
TOTAL OF ALL SCHEDULES	\$ _____

2. The ward resides at: _____
 Street City State Zip
 and (check one):
 A. Does not have a guardian.
 B. Has a natural guardian whose name is: _____
 and whose address is: _____
 Street City State Zip
 C. Has a court-appointed guardian whose name is: _____
 and whose address is: _____
 Street City State Zip
3. Your conservator (has) (has not) established a (noninterest bearing) (interest bearing) conservatorship checking account at: _____
 Name of Financial Institution
 located at _____
 Street City State Zip
 The account number is: _____.
4. A conservatorship savings account (has) (has not) been established at the _____
 Name of Financial Institution
 located at _____
 Street City State Zip
 The account number is: _____.
5. Other assets (have) (have not) been changed into conservatorship's name.
6. The ward's sources of income and monthly or annual amounts are:

Conservator

Address

Telephone Number

Initial Report of Conservator and Inventory (*cont'd*)

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 4: Annual Report of Conservator.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

ANNUAL REPORT

1. This report is for the period from _____, 20 ____, to _____, 20 ____. (Use ending date of last accounting where applicable.)

2. Total cash on hand at close of the last accounting was \$ _____.

3. Total sum of funds received during this report period was \$ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)

4. Total sum of disbursements made during this report period was \$ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)

5. The balance of cash on hand at the close of this report period is \$ _____.

6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)

7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)

8. The total value of assets of the ward at the close of this report period is \$ _____.

9. Amount of conservator's bond is: \$ _____. Surety is: _____.

10. (Check one)

____ The ward has no guardian.

____ The name of the ward's guardian is: _____.

11. (Answer Number 11 only if ward has no guardian.)

A. The residence and physical location of the ward is:

_____.

B. The ward's general physical and mental condition is:

_____.

12. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)

13. Fees for conservator are (hereby applied for) (waived).

(Attach Affidavit per Iowa Code section 633.202.)

14. Fees for conservator's attorney (check one): _____ should be set by the court;
_____ no fees requested; _____ waived or not applicable.

(Attach Affidavit per Iowa Code section 633.202, if fees requested.)

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 5: Final Report of Conservator.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

FINAL REPORT

1. This report is for the period from _____, 20 ____, to _____, 20 ____. (Use ending date of last accounting where applicable.)
2. Total cash on hand at close of the last accounting was \$ _____.
3. Total sum of funds received during this report period was \$ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)
4. Total sum of disbursements made during this report period was \$ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)
5. The balance of cash on hand at the close of this report period is \$ _____.
6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)
7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)
8. The total value of assets of the ward at the close of this report period is \$ _____.
9. (Check one) (Attach as Exhibit "E" statement of reasons for termination.)
 The court on the _____ day of _____, 20 ____ ordered termination.
 The termination is concurrently being sought along with approval of final report.
10. On termination funds and assets of this conservatorship will be distributed to (name, address, relationship to ward, if any):
 _____.
11. Notice of hearing on final report (has) (has not) been waived. (If waived attach copy of waiver.)
12. Amount of conservator's bond is: \$ _____. Surety is: _____. Order approving final report and termination should discharge surety and release bond.
13. (Check one)
 The conservator is also the guardian and has filed final guardian's report on _____, 20 ____.
 The ward has no guardian.
 The name of the ward's guardian is: _____.
14. (Answer Number 14 only if ward has no guardian.)
 A. The residence and physical location of the ward is:
 _____.
 B. The ward's general physical and mental condition is:
 _____.
15. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)
16. Final court costs (have) (have not) been paid.
17. Fees for conservator are (hereby applied for) (waived).
 (Attach Affidavit per Iowa Code section 633.202.)

Final Report of Conservator (*cont'd*)

18. Fees for conservator's attorney (check one): _____ should be set by the court; _____
no fees requested; _____ waived or not applicable.

(Attach Affidavit per Iowa Code section 633.202, if fees requested.)

19. Receipt(s) of the distributee(s) for the funds and assets of the conservatorship (check one):

____ Are attached.

____ Will be attached to supplemental report after court approves final report.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

CHAPTER 22

JUDICIAL ADMINISTRATION

Rule 22.1	Supervision of courts
Rule 22.2	Recall and transfer of judges
Rule 22.3	Selection of chief judges
Rule 22.4	Order appointing chief judge
Rule 22.5	Duties and powers of chief judges
Rule 22.6	Court and trial sessions
Rule 22.7	Case assignment
Rule 22.8	Judicial district scheduling
Rule 22.9	Change of venue to another judicial district
Rule 22.10	Judges — monthly report
Rule 22.11	Practice of law by judges
Rule 22.12	Senior judges
Rule 22.13	Service by retired judges
Rule 22.14	Judicial vacation
Rule 22.15	Quasi-judicial business
Rule 22.16	Preaudit travel claims of judiciary — definitions
Rule 22.17	Reimbursable travel
Rule 22.18	Transportation
Rule 22.19	Lodging
Rule 22.20	Meals
Rule 22.21	Miscellaneous travel provisions
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Rule 22.23	Honoraria
Rule 22.24	Interests in public contracts
Rule 22.25	Services against the state
Rule 22.26	Personal disclosure
Rule 22.27	Definitions
Rule 22.28	Transcripts — rates for transcribing a court reporter's official notes
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Rule 22.30	Use of signature facsimile
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Rule 22.34	Judicial branch appointments
Rule 22.35	Service copies
Rule 22.36	Paper size and requested copies
Rule 22.37	Purging of case files
Rule 22.38	Purging of case files — lists
Rule 22.39	Staffing offices of clerks of court
Rule 22.40	Public business hours of offices of clerks of court

CHAPTER 22 JUDICIAL ADMINISTRATION

Rule 22.1 Supervision of courts. The supreme court, by and through the chief justice, shall exercise supervisory and administrative control over all trial courts in the state, and over the judges and other personnel thereof, including but not limited to authority to make and issue any order a chief judge may make under rule 22.5, or to modify, amend or revoke any such order or court schedule.
[Report 1969; Court Order November 9, 2001, effective February 15, 2002]

Rule 22.2 Recall and transfer of judges. The supreme court by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently.
[Report 1969; Court Order November 9, 2001, effective February 15, 2002]

Rule 22.3 Selection of chief judges. Not later than December 15 in each odd-numbered year the chief justice, with the approval of the supreme court, shall appoint from the district judges of each district one of their number to serve as chief judge. The judge so appointed shall serve for a two-year term and shall be eligible for reappointment. Vacancies in the office of chief judge shall be filled in the same manner within 30 days after the vacancy occurs. During any period of vacancy the judge of longest service in the district shall be the acting chief judge.
[Report 1969; Court Order October 31, 1997, effective January 24, 1998; October 27, 1999, effective January 3, 2000; November 9, 2001, effective February 15, 2002]

Rule 22.4 Order appointing chief judge. An order appointing a chief judge shall be filed with the clerk of the supreme court who shall mail a copy to the clerk of the district court in each county in the judicial district. The clerk of the supreme court may mail the copies of the order electronically.
[Report 1969; Court Order November 9, 2001, effective February 15, 2002; April 11, 2007]

Rule 22.5 Duties and powers of chief judges. In addition to their ordinary judicial duties, chief judges shall exercise continuing administrative supervision within their respective districts over all district courts, judges, magistrates, officials and employees thereof for the purposes stated in Iowa R. Civ. P. 1.1807. They shall by order fix times and places of holding court and designate the respective presiding judges and magistrates; they shall supervise and direct the performance of all administrative business of their district courts; they may conduct judicial conferences of their district judges, district associate judges, and magistrates to consider, study and plan for improvement of the administration of justice; and may make such administrative orders as necessary. No chief judge shall at any time direct or influence any judge or magistrate in any ruling or decision in any proceeding or matter whatsoever.

The chief judge of a judicial district may appoint from the other district judges an assistant or assistants to serve on a judicial district-wide basis and at the chief judge's pleasure. When so acting, such an assistant shall have those powers and duties given to the chief judge by statute or rule of court which are specified in the order of appointment. Such appointment shall by general order be made a matter of record in each county in the judicial district.
[Report 1969; amendment 1972; amendment 1979; Court Order October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

Rule 22.6 Court and trial sessions. Chief judges shall by order provide for the following:

22.6(1) A court session by a district judge at least once each week in each county of the district, announced in advance in the form of a written schedule, unless a different schedule is approved by the supreme court.

22.6(2) Additional sessions in each county for the trial of cases, and other judicial matters, of such duration and frequency as will best serve to expeditiously dispose of pending cases ready for trial, and other pending judicial matters.

[Report 1969; Court Order November 9, 2001, effective February 15, 2002]

Rule 22.7 Case assignment. The chief judge may assign and monitor cases within the district and may delegate this authority to the district court administrator by general supervisory order or on

a case-by-case basis. District judges, district associate judges, associate juvenile judges, associate probate judges, and magistrates shall attend to any matter within their statutory jurisdiction assigned to them by the chief judge.

[Court Order May 30, 1986; February 14, 1996; July 26, 1996; November 9, 2001, effective February 15, 2002]

Rule 22.8 Judicial district scheduling.

22.8(1) The chief judge of each judicial district shall by annual written order set the times and places of holding court within the judicial district and designate the respective presiding judges. The order shall provide for a court session at least once a week in each county of the judicial district, unless otherwise approved by the supreme court. The order shall provide for a scheduled trial session in each county of the judicial district at least four times each year, to be presided over by a different judge. In determining the schedule ordered, the chief judge shall rotate trial judges without regard to judicial election district lines to facilitate the administration of justice, integrate the district bench and promote the ideal of district administration.

22.8(2) An order of the chief judge demonstrating compliance with this rule for the next calendar year shall be filed by October 15 of the preceding calendar year with the clerk of the supreme court. Following supreme court approval, the chief judge shall file a copy of the order with the clerk of the district court in each county of the respective judicial district.

[Court Order October 15, 1985; November 9, 2001, effective February 15, 2002]

Rule 22.9 Change of venue to another judicial district.

22.9(1) Definitions. As used in this rule:

- a. “*Receiving county*” means the county to which a change of venue is ordered.
- b. “*Sending county*” means the county from which a change of venue is ordered.

22.9(2) Communication prior to ordering a change of venue. Before ordering a change of venue to another judicial district for trial, a judge shall communicate with the office of the chief judge of the judicial district in which the intended receiving county is located. The judge shall determine from inquiry of the chief judge or the chief judge’s designee the availability of a courtroom, a jury panel if required, and any necessary court personnel in the receiving county. Subject to the approval of the chief justice, the judicial district in which the sending county is located shall provide the trial judge and court reporter for the transferred proceeding.

22.9(3) Transmission of copies of order changing venue. Copies of an order changing venue shall be promptly transmitted to all of the following:

- a. The chief judge of the judicial district in which the receiving county is located.
- b. The court administrator for the judicial district in which the receiving county is located.
- c. The clerk of the district court for the receiving county.
- d. The state court administrator, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.
- e. Any other persons required by law to receive copies of such an order.

22.9(4) Action brought in wrong county. This rule does not apply where the action was brought in the wrong county.

[Court Order October 20, 1981; November 9, 2001, effective February 15, 2002; April 9, 2003]

See also rule 2.11 and rule 2.65.

Rule 22.10 Judges — monthly report.

22.10(1) Each senior judge, district judge, district associate judge, full-time associate juvenile judge, full-time associate probate judge, and judicial magistrate shall report monthly to the supreme court, through the office of the state court administrator, all matters taken under advisement in any case for longer than 60 days, together with an explanation of the reasons for the delay and an expected date of decision. If no matters have been taken under advisement over 60 days, the report shall state “none.” Senior judges need only file reports for those months during which they perform judicial duties or have matters under advisement.

22.10(2) Any submission shall be reported when all hearings have been completed and the matter awaits decision without further appearance of the parties or their attorney. A matter shall be deemed submitted even though briefs or transcripts have been ordered but have not yet been filed.

22.10(3) The report shall be due on the tenth day of each calendar month for the period ending with the last day of the preceding calendar month. The report shall be signed by the judge or magistrate and submitted on a form prescribed by the state court administrator.

22.10(4) A judge who is reporting a matter or matters taken under advisement for longer than 60 days shall send to the district court administrator a copy of the report forwarded to the state court administrator. The chief judge of the district shall review the copies filed in the district court administrator's office and take such action as shall be appropriate. A chief judge may elect whether to report any action taken to the supreme court. A district chief judge reporting such matters to the supreme court shall forward a copy to the liaison justice for the chief judge's judicial district.

22.10(5) The state court administrator shall promptly cause all reports received to be filed in the office of the clerk of the supreme court as records available for public inspection.

[Court Order December 15, 1977; February 20, 1981; July 16, 1984 — received for publication October 25, 1984; June 28, 1985, effective July 1, 1985; July 26, 1996; November 9, 2001, effective February 15, 2002]

Rule 22.11 Practice of law by judges.

22.11(1) A newly appointed full-time associate juvenile judge, full-time associate probate judge, district associate judge, district judge, court of appeals judge, or supreme court justice (hereinafter, judge) may have 30 days from the date of qualifying for office pursuant to Iowa Code section 63.6, or until the vacancy in the office actually occurs, whichever is later, in which to terminate any private law practice before assuming judicial duties. No newly appointed judge shall be placed on the state payroll or assume judicial duties until such private practice is concluded.

22.11(2) In terminating a law practice, the newly appointed judge shall undertake no new matters, shall conclude those matters which can be completed within the time provided in rule 22.11(1) and shall transfer those matters which cannot be so concluded or which require trial. While in the process of terminating a private practice, the newly appointed judge shall keep court appearances to a minimum.

22.11(3) Upon good cause shown, the supreme court may extend the time in which a newly appointed judge shall comply with this rule.

22.11(4) After assuming judicial duties and being placed on the payroll, a judge shall not engage in the practice of law. The practice of law includes but is not limited to the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns.

[Court Order April 29, 1980; June 28, 1985, effective July 1, 1985; July 26, 1996; December 17, 1996, effective January 2, 1997; November 9, 2001, effective February 15, 2002; April 4, 2002]

Rule 22.12 Senior judges.

22.12(1) The supreme court, in ruling on an application for senior status, including reappointment of an applicant to an additional term, may consider the following factors:

a. The applicant's demonstrated willingness and ability to undertake and complete all assigned work during the applicant's service as a judge or a senior judge.

b. The result of a confidential vote of all full-time judges of the judicial district or appellate court in which the applicant served as a full-time judge. In addition, if the applicant is requesting assignment to another district or to an appellate court in which the applicant did not serve as a full-time judge, the court shall consider the result of a confidential vote of all full-time judges of the judicial district or the appellate court to which the applicant requests assignment: i.e., (suggested) "Shall X be appointed a senior judge?"

c. The result of the most recent judicial plebiscite.

d. The applicant's monthly reports issued pursuant to rule 22.10.

e. The applicant's agreement to perform duties as scheduled and assigned by the chief judge of the district or appellate court where the senior judge is assigned.

f. The applicant's plans, if any, to regularly spend time or reside out-of-state or to become a resident of a state other than Iowa, or an applicant's residency in a state other than Iowa.

g. The applicant's work or plans to work as a mediator, arbitrator or provider of other alternative dispute resolution services.

22.12(2) A person who files an election to become a senior judge any time after the date of retirement, pursuant to Iowa Code section 602.9203, shall file written evidence with the clerk of the supreme court that the person has not engaged in the practice of law between the person's date of retirement and date of senior judge election.

22.12(3) An applicant for appointment to become a senior judge or a senior judge who applies for reappointment to an additional term shall provide evidence to the satisfaction of the supreme court that the applicant or senior judge does not suffer from a physical or mental disability or an illness that would substantially interfere with the performance of duties agreed to under this rule. Evidence shall include:

a. A statement of ability to serve by the applicant and a written opinion of a doctor of medicine or doctor of osteopathic medicine and surgery.

b. Prior to or following appointment or reappointment, a judge or senior judge must provide the court with additional information about the senior judge's physical and mental health and authorization for the release of medical information upon request.

22.12(4) A senior judge shall cease holding office when the senior judge reaches seventy-eight years of age. However, the supreme court may appoint a senior judge to serve up to two additional one-year terms after reaching seventy-eight years of age. To be eligible for consideration, a senior judge must file an application for reappointment within 30 days prior to the expiration of the senior judge's term. Under no circumstances shall a senior judge serve after reaching the age of eighty.

22.12(5) At the end of each calendar quarter, a senior judge shall file a report with the clerk of the supreme court indicating the dates on which the senior judge performed judicial or other assigned duties and the nature of the duties performed or the name of the cases over which the judge presided on each date of service. A senior judge assigned to a judicial district shall provide a copy of the report to the chief judge and the district court administrator. A senior judge assigned to an appellate court shall provide a copy of the report to the chief judge of the court of appeals or the chief justice, whichever is appropriate, and to the state court administrator. For purposes of this rule, a calendar quarter is a three-month period in the one-year period that commences on the date a retired judge becomes a senior judge and continues for each successive one-year period while the judge continues to be a senior judge.

22.12(6) Senior judges and applicants for appointment and reappointment to the senior judge program must provide information and reports required by this section on forms approved by the supreme court.

22.12(7) The following rules shall apply to senior judges, retired judges assigned to temporary judicial duties pursuant to Iowa Code section 602.1612, and retired senior judges assigned to temporary judicial duties pursuant to section 602.1612 who wish to engage in mediation, arbitration, or other forms of alternate dispute resolution:

a. A judge covered by this rule shall not act as an arbitrator, mediator, or provider of other forms of alternate dispute resolution while assigned to judicial service or when such action will interfere with an assignment to judicial service. A judge covered by this rule shall not use the title "senior judge" or the title "judge" in any form while acting as an arbitrator or mediator.

b. A senior judge shall disclose to the parties if the senior judge has mediated a dispute involving any party or any party's insurer, lawyer, or law firm involved in a case before the senior judge, and any negotiations or agreements for the provision of mediation services between the senior judge and any party or any party's insurer, lawyer, or law firm to a case before the senior judge. A senior judge shall not preside over any case involving a party or a party's insurer, lawyer, or law firm that is using or negotiating to use the senior judge as a mediator, or has used or agreed to use the senior judge as a mediator in the past two years. A senior judge shall not serve as a mediator in any case in which the judge is currently presiding. A senior judge shall not mediate any dispute that is filed in or could be venued or filed in the judicial district or appellate court in which the judge serves. These restrictions cannot be waived by consent of the parties or lawyers. For purposes of this section, mediation includes arbitration and other forms of alternate dispute resolution.

c. At the end of each calendar quarter, a senior judge who has engaged in private mediation or dispute resolution activities during the quarter shall file a report with the clerk of the supreme court. The senior judge shall report the date or time period when the mediation occurred, the county where the mediation occurred, the county in which the dispute arose, the names of the parties, and the names of the lawyers and insurers, if any, involved in the mediation. A senior judge assigned to a judicial district shall provide a copy of the report to the chief judge and to the district court administrator. A senior judge assigned to an appellate court shall provide a copy of the report to the chief judge of the court of appeals or the chief justice, whichever is appropriate, and to the state court administrator. For purposes of this rule, a calendar quarter is a three-month period in the one-year period that commences

on the date a retired judge becomes a senior judge and continues for each successive one-year period while the judge continues to be a senior judge.

[Court Order December 17, 1996, effective January 2, 1997; November 9, 2001, effective February 15, 2002; February 27, 2008; October 31, 2008, effective January 1, 2009; April 30, 2010, effective May 3, 2010]

Rule 22.13 Service by retired judges. No retired judge or retired senior judge shall be eligible for temporary service under the provisions of Iowa Code section 602.1612 after reaching the age of 78. [Court Order September 30, 1987; November 9, 2001, effective February 15, 2002]

Rule 22.14 Judicial vacation.

22.14(1) Supreme court justices, court of appeals judges, district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges are entitled to 22 working days of vacation per calendar year. After 15 years of service with the judicial branch, supreme court justices, court of appeals judges, district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges are entitled to 27 working days of vacation per calendar year.

Vacation schedules of district judges, district associate judges, full-time associate juvenile judges, and full-time associate probate judges shall be coordinated through the office of the chief judge of the district. The chief judge shall cause a record to be kept of the amount of vacation taken by each judicial officer in the district. The number of vacation days shall be prorated during the calendar years a judicial officer begins and separates from judicial service.

No more than 27 working days of accrued, unused vacation from a prior year may be carried into a calendar year. Separation from judicial office shall cancel all unused vacation time. No compensation shall be granted for unused vacation time remaining at the time of separation.

22.14(2) Schedules for judicial magistrates should be arranged by the chief judge of each district to accommodate a reasonable vacation period; however, a judicial magistrate shall not be entitled to any specific vacation days for which compensation may be granted, nor may compensation be granted for days not taken prior to separation from judicial service.

[Court Order May 20, 1980; May 23, 1985, effective August 1, 1985; September 18, 1992, effective January 2, 1993; July 26, 1996; November 9, 2001, effective February 15, 2002; August 29, 2002; November 22, 2004, effective January 1, 2005]

Rule 22.15 Quasi-judicial business.

22.15(1) Each supreme court justice, court of appeals judge, district judge, district associate judge, full-time associate juvenile judge, and full-time associate probate judge may take up to ten working days per calendar year for the purpose of quasi-judicial business. This right is subject to the ability of the chief judge of each district to make necessary scheduling adjustments to accommodate requests. The ten days shall be prorated during the calendar years a judicial officer begins and separates from judicial service. The chief justice of the supreme court may authorize exceptions to this rule.

22.15(2) “Quasi-judicial business” includes teaching, speaking, attending related educational programs, courses or seminars, and those duties specified in rule 22.16(5)(b)(8) and rule 22.16(5)(b)(13) but does not include time spent on other “official duties” enumerated in rule 22.16(5)(b), or teaching judicial branch educational programs when prior approval is obtained from the chief judge of the appropriate judicial district and chief justice of the supreme court.

[Court Order May 20, 1980; May 23, 1985, effective August 1, 1985; June 28, 1985, effective July 1, 1985; October 24, 1985, effective November 1, 1985; July 26, 1996; November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 22.16 Preaudit travel claims of judiciary — definitions. As used in this rule and rules 22.17 through 22.21:

22.16(1) “*Court employee*” or “*employee of the judicial branch*” means an officer or employee of the judicial branch except for a judicial officer or a court reporter.

22.16(2) “*Court reporter*” means every full-time or temporary court reporter compensated by the judicial branch pursuant to Iowa Code section 602.1502.

22.16(3) “*Judicial officer*” means every justice, judge, district associate judge, senior judge, associate juvenile judge, associate probate judge, judicial hospitalization referee, and magistrate, appointed to serve in the state of Iowa.

22.16(4) “*Official domicile*” means the following:

a. "Court employee's official domicile" means the city, town, or metropolitan area within which the office is located to which that court employee is assigned. Transportation costs between any such employee's permanent home and that person's office, and subsistence within the limits of an employee's official domicile are not reimbursable.

b. "Judicial officer and court reporter's official domicile." By December 15 of each year, the chief judge of the judicial district shall designate a courthouse as an official domicile for each judicial officer and court reporter. The official domicile of a judicial officer and a court reporter shall be the courthouse in the county in which the judge or court reporter works more than 50 percent of the time. When the judge or reporter does not work more than 50 percent of the time in the same courthouse, the judge's or reporter's official domicile shall be a courthouse designated by the chief judge. Notification of the official domicile must be filed with the state court administrator's office.

c. Reserved.

d. For purposes of this definition, the following are official domicile-defining metropolitan areas.

Metropolitan Areas	Inclusions
1. Cedar Rapids	1. Hiawatha Marion
2. Clinton	2. Camanche Elvira Low Moor
3. Council Bluffs	3. Bellevue Bennington Boys Town Carter Lake Elkhorn Irvington LaPlatte LaVista Millard Omaha Papillion Ralston Springfield
4. Davenport	4. Bettendorf East Moline Hampton Milan Moline Pleasant Valley Riverdale Rock Island Silvis
5. Des Moines	5. Polk County
6. Dubuque	6. Asbury Centralia East Dubuque Sageville
7. Iowa City	7. Coralville
8. Mason City	8. Clear Lake
9. Sioux City	9. North Sioux City Sergeant Bluff South Sioux City
10. Waterloo	10. Cedar Falls Evansdale

22.16(5) “*Official duties*” means the following:

a. “*Official duties*” of a court reporter or court employee are the responsibilities and functions contained in the judicial branch job description for the position the individual holds.

b. “*Official duties*” of a judicial officer are the responsibilities and functions customarily and usually pertaining to the office of judge or referee. Subject to Iowa Code section 602.1509, and this rule and rules 22.17 through 22.21, official duties include the following:

(1) Attendance at court sittings and performance of the other work of the court.

(2) Attendance at judicial conferences called under Iowa Code section 602.1203.

(3) Attendance by district judges, district associate judges, associate juvenile judges, associate probate judges, and judicial magistrates at district judicial conferences called by chief judges of the district court.

(4) Attendance to give testimony before committees of the general assembly, at the committees’ request.

(5) Attendance at meetings of judicial nominating commissions as the judicial member of the commission.

(6) Performance of functions as a member of committees or commissions appointed by the supreme court, the chief justice, or a chief judge of the district court on court procedure, administration, or structure.

(7) Attendance at meetings when designated by the chief justice to represent the judicial branch.

(8) If approved in advance by the chief justice: attendance to serve as judge at moot court proceedings for Iowa Law School and Drake Law School not to exceed one attendance per calendar year by any one attending judge; attendance at legal or judicial educational and training sessions and courses outside the state; and attendance at meetings of national associations of chief justices, appellate court justices and judges, trial court judges, and judicial officers of limited jurisdiction.

(9) Performance by chief judges of the district court of their administrative functions.

(10) Attendance by members of the judicial council at meetings of the council and of its committees.

(11) Performance by liaison justices of their functions as such within their assigned judicial districts.

(12) Attendance by district associate judges and judicial magistrates at the Iowa judicial magistrates schools of instruction and traffic court conferences.

(13) Performance of functions for which reimbursement of travel expense is authorized by any other Iowa statute or rule of the supreme court.

[Court Order November 9, 2001, effective February 15, 2002; August 29, 2002; Supervisory Order August 10, 2004]

Rule 22.17 Reimbursable travel.

22.17(1) *In-state.*

a. Expenses incurred for in-state travel outside the judicial district, except expenses incurred by juvenile court officers in the discharge of their official duties, are not reimbursable unless prior approval for the travel has been given by the chief justice or the chief justice’s designee on a prescribed form. In-state travel for juvenile court officers shall include travel within a 100-mile radius outside the borders of the state of Iowa. Expenses incurred for in-state travel outside the judicial district by juvenile court officers in the discharge of their official duties are not reimbursable unless approval for the travel has been given by the chief juvenile court officer of the judicial district.

b. Reimbursement under this chapter for in-state travel expenses incurred by juvenile court officers in the discharge of their official duties shall be provided from funds administered by the judicial branch or pursuant to Iowa Code section 232.141, as applicable.

22.17(2) *Out-of-state.*

a. Requests to attend conferences, meetings, training courses, programs, and similar gatherings which require out-of-state travel shall be submitted to the chief justice or the chief justice’s designee on a prescribed form at least two weeks prior to the proposed departure date. No reimbursement of out-of-state expenses shall be made unless the trip has received prior approval of the chief justice or the chief justice’s designee except as otherwise provided in this rule.

b. Reimbursement for expenses incurred for out-of-state travel by juvenile court officers in the discharge of their official duties relating to court-ordered transportation and placement shall be

allowed if oral or written approval is given by the chief juvenile court officer of the judicial district and the chief justice or the chief justice's designee at any time prior to the proposed departure.

c. Reimbursement under this chapter for out-of-state travel expenses incurred by juvenile court officers in the discharge of their official duties shall be provided from funds administered by the judicial branch or pursuant to Iowa Code section 232.141, as applicable.

[Court Order November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 22.18 Transportation.

22.18(1) *Route and conveyance.* Transportation shall be by the usually traveled route. Mileage shall be based on mileage published by the department of transportation. Reimbursement shall be limited to the most economical means of conveyance available.

22.18(2) *Mileage — personal car.* Judicial officers, court reporters, and court employees shall be reimbursed their mileage expense when required in the discharge of official duties to travel outside their official domicile. Reimbursement shall be for the miles driven from the official domicile or employee's residence, whichever is less, to the assigned work location. In no instance shall employees and judicial officers be reimbursed for more than actual miles driven, or for commuting to and from their residence and their official domicile or a courthouse within their county of residence. Carpooling is required whenever possible. A judge and the judge's court reporter shall not be separately reimbursed for duplicate mileage expense in traveling to court assignments. The allowance for use of a private automobile on official judicial branch business shall be established by order¹ of the supreme court and shall be presumed to include all automobile expenses. Additionally, judicial officers, juvenile court officers, court reporters, and court employees shall be reimbursed their mileage expense for travel required in the discharge of official duties within the continuous metropolitan area of their official domicile, but not for commuting.

22.18(3) *Transportation other than private automobile.* Expenses for transportation other than private automobile are reimbursed on an actual incurred cost basis and must be claimed accompanied by an original receipt.

22.18(4) *Reimbursement of parking.* Reimbursement for parking expense is allowable when mileage is claimed. Receipts for parking, taxi and/or other transportation expenses, are not required when the total amount, per day, does not exceed \$15. Receipts must be attached to the travel voucher for employees to receive reimbursement for the above expenses in excess of \$15 per day.

[Court Order November 9, 2001, effective February 15, 2002; August 29, 2002; Supervisory Order August 10, 2004]

Rule 22.19 Lodging.

22.19(1) *In-state.*

a. Lodging expense is reimbursed as incurred when a judicial officer, court reporter, or court employee is required, in the discharge of official duties, to leave the county of that person's official domicile. The name of the establishment where the expense is incurred shall be indicated on the claim form and the original receipt shall be attached. The single room rate is to be noted on the receipt when other than a single room was charged. Special rates for judicial officers, court reporters, and court employees are available at many motels and hotels in the state. An identification card identifying the holder as a judicial officer, court reporter, or court employee is usually necessary. Identification cards are available upon request from the office of the state court administrator. The allowance for lodging shall be the actual cost, but not exceeding \$55 (plus applicable taxes) per day.

b. Judicial officers and court employees are to seek lodging facilities whose rates are within those prescribed in this rule or a reasonable explanation must be noted in the expense claim in order to be considered for reimbursement over the defined maximum rates. (*See rule 22.21(6)*). When seeking overnight lodging judicial officers and court employees should request the lowest of "state," "government," or "commercial" rates, as many facilities offer these "special" rates which a state employee can and should obtain.

1. 40 cents per mile, Supervisory Order 7/18/07, effective 8/1/07.

22.19(2) *Out-of-state.* Lodging expense is not limited outside the state, but the incurred expenditures are to be reasonable. Lodging for approved out-of-state travel shall be reimbursed for the night preceding and the night of the ending date of the authorized meeting. [Court Order November 9, 2001, effective February 15, 2002; June 16, 2006, effective July 1, 2006; January 4, 2012]

Rule 22.20 Meals.

22.20(1) *In-state.* Incurred meal expense shall be reimbursed at “reasonable and necessary” cost when a judicial officer, court reporter, or court employee is required, in the discharge of official duties, to leave the county of that person’s official domicile. A maximum of \$28 per day may be reimbursed for meals, as outlined below; however, if departure from the official domicile is before 6 a.m., a notation must be included on the Travel Voucher. At the return of the trip, if arrival back at the official domicile is after 7 p.m., a notation to this effect must be included on the Travel Voucher. Meal allowance for travel will be as follows:

a. Departure before 6 a.m. and return to official domicile after 7 p.m. may be reimbursed the actual cost for breakfast, lunch, and dinner up to a maximum of \$28.

b. Departure before 6 a.m. and return to official domicile before 7 p.m. may be reimbursed the actual cost for breakfast and lunch up to a maximum of \$13.

c. Departure after 6 a.m. and return to official domicile after 7 p.m. may be reimbursed the actual cost for lunch and dinner up to a maximum of \$23.

d. Departure after 6 a.m. and return to official domicile before 7 p.m. may be reimbursed the actual cost for lunch up to a maximum of \$8.

22.20(2) *Out-of-state.* Meal expenses are not limited out-of-state, but the incurred expenses are to be reasonable. When in travel status, lunch and dinner the day preceding the meeting, and breakfast and lunch the day after a meeting, are reimbursable expenditures.

22.20(3) *Overnight lodging required.* The provisions for meal reimbursement in rules 22.20(1) and 22.20(2) apply only when the travel includes overnight lodging. [Court Order November 9, 2001, effective February 15, 2002, May 8, 2006; July 18, 2007, effective August 1, 2007]

Rule 22.21 Miscellaneous travel provisions.

22.21(1) *Continuing education expenses.* Provisions relating to “Official duties,” “Travel,” “Transportation,” “Lodging” and “Meals” as used in rules 22.16 through 22.21 shall not be applicable to expenses for continuing education requirements for court reporters or court employees, unless otherwise ordered by the chief justice or the chief justice’s designee.

22.21(2) *Examining Board expenses.* Board of Law Examiners and Shorthand Reporters Examiners will be reimbursed actual and necessary expenses not to exceed one and one-half times the reimbursement allowances provided in rules 22.19 and 22.20.

22.21(3) *Living outside official domicile.* When additional expense is incurred by reason of a court employee maintaining a permanent home in a city, town, or metropolitan area other than that person’s official domicile, unless otherwise determined by the state court administrator, the additional expense is not reimbursable.

22.21(4) *Registration fees.* Registration fees for authorized meetings and conferences are an allowable expense when accompanied by receipt.

22.21(5) *Claim preparation.* All claims shall be typewritten, or printed in ink, and signed by the claimant. Receipts for lodging, public transportation, and any authorized miscellaneous expenses shall be attached to the upper left-hand corner of the form. Claim for reimbursement for out-of-state travel shall be submitted for payment upon completion of the trip.

If reimbursement is sought pursuant to Iowa Code section 232.141, the district court administrator shall process the claim per rules and procedures of the applicable county and the department of human services.

22.21(6) *Exceptions.* The chief justice or the chief justice’s designee may grant exceptions to rules 22.16 through 22.21 as necessitated by unusual circumstances.

22.21(7) *Refreshments.* The cost of refreshments served at meetings will not be reimbursed, except for educational programs sponsored and authorized by the chief justice or the chief justice’s designee.

22.21(8) Form. A written request for travel authority from the chief justice or the chief justice’s designee pursuant to rules 22.16 through 22.21 shall be in substantially the following form:

JUDICIAL BRANCH
REQUEST FOR TRAVEL AUTHORITY

_____ Outside of Iowa
_____ In-state, out of Judicial District
Date _____

Name _____
Title _____
Judicial District _____
Form to be submitted to Chief Justice of the Supreme Court or the Chief Justice’s designee prior to proposed departure date. See rules 22.16 to 22.21 for applicable travel and time for submission.

DEPARTURE FROM: _____ DESTINATION: _____

TRAVEL DATES (ROUND TRIP): _____

MODE OF TRAVEL: _____

PURPOSE OF TRAVEL: (INCLUDE NATURE AND DATES OF MEETING OR OTHER PURPOSE OF TRAVEL AND JUSTIFICATION FOR PROFESSIONAL PURPOSES)

ESTIMATED COST:
Transportation:
Lodging:
Meals:
Other (Please Specify):
Total:

Anticipated Funding Source(s): _____

Approved as to form: _____
Person requesting approval

_____ District Court Administrator
(initials) Supervising authority (when applicable)

Request Approved/Denied: _____
Chief Judge Date

Request Approved/Denied: _____
Chief Justice Date
Supreme Court of Iowa
(or Chief Justice’s designee)

[Court Order June 11, 1981; November 30, 1981 (Received for publication January 5, 1983); June 28, 1984; June 28, 1985, effective July 1, 1985; October 3, 1985, effective October 15, 1985; May 15, 1986, effective July 1, 1986; November 20, 1986, effective December 1, 1986; July 21, 1988, effective August 1, 1988; October 12, 1989, effective November 1, 1989; November 13, 1990, effective January 2, 1991; January 17, 1991; July 12, 1991, effective July 12, 1991, for expenses on or after January 2, 1991; December 16, 1994, effective December 16, 1994; December 16, 1994, effective January 2, 1995; January 3, 1996; March 21, 1996; July 26, 1996; November 5, 1996; December 21, 1999, effective January 1, 2000; May 26, 2000, effective July 1, 2000; November 9, 2001, effective February 15, 2002]

Rule 22.22 Gifts.

22.22(1) Judicial officers are not subject to the provisions of this rule, but shall be subject to the gift provisions of the Iowa Code of Judicial Conduct.

22.22(2) Except as otherwise provided in this rule, an employee of the judicial branch or a member of that person’s immediate family shall not, directly or indirectly, accept, receive or solicit any gift or series of gifts.

22.22(3) As used in this rule:

a. "Employee" means any employee of the judicial branch other than a judicial officer subject to the gift provisions of the Iowa Code of Judicial Conduct.

b. "Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given or received, if the donor is:

(1) A party or other person involved in a case pending before the donee.

(2) A party or a person seeking to be a party to any sale, purchase, lease or contract involving the judicial branch or any of its offices, if the donee has authority to approve the sale, purchase, lease or contract, or if the donee assists or advises the person with authority to approve the sale, purchase, lease or contract.

(3) A person who will be directly or substantially affected by the performance or nonperformance of the donee's official duties in a way that is greater than the effect on the public generally or on a substantial class of persons to which the donor belongs as a member of a profession, occupation, industry or region.

c. "Gift" does not include:

(1) Informational material relevant to the employee's duties, such as books, pamphlets, reports, documents or periodicals, or the cost of registration for an education conference or seminar which is relevant to the employee's duties.

(2) Anything received from a person related within the fourth degree of kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

(3) An inheritance or bequest.

(4) Anything available or distributed to the public generally without regard to the official status of the recipient.

(5) Actual expenses of a donee for food, beverages, travel, and lodging, which is given in return for participation at a meeting as a speaker, panel member or facilitator, when the expenses relate directly to the day or days on which the donee participates at the meeting, including necessary travel time.

(6) Plaques or items of negligible resale value given as recognition for public service.

(7) Nonmonetary items with a value of \$3 or less that are received from any one donor during one calendar day.

(8) Items or services solicited by or given to a state, national or regional organization in which the state of Iowa or a political subdivision of the state is a member.

(9) Items or services received as part of a regularly scheduled event that is part of a conference, seminar or other meeting that is sponsored and directed by any state, national or regional organization in which the judicial branch is a member.

(10) Funeral flowers or memorials to a church or nonprofit organization.

(11) Gifts which are given to an employee for the employee's wedding or twenty-fifth or fiftieth wedding anniversary.

d. "Immediate family" means the spouse and minor children of an employee of the judicial branch.

22.22(4) For purposes of determining the value of an item, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value shall be the value actually received by the donee.

22.22(5) An employee of the judicial branch or the person's immediate family member, may accept a nonmonetary gift or a series of nonmonetary gifts and not be in violation of this rule if the nonmonetary gift or series of nonmonetary gifts is donated within 30 days to a public body, the state court administrator, the department of general services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual.

[Court Order June 30, 1980; July 31, 1987, effective August 3, 1987; December 29, 1992, effective January 1, 1993; August 19, 1993; November 9, 2001, effective February 15, 2002; April 30, 2010, effective May 3, 2010]

Rule 22.23 Honoraria.

22.23(1) An official or employee of the judicial branch shall not seek or accept an honorarium.

22.23(2) As used in this rule:

a. "Honorarium" means anything of value that is accepted by, or on behalf of, an official or employee of the judicial branch as consideration for an appearance, speech or article if the donor is:

- (1) A party or other person involved in a case pending before the donee.
- (2) A party or person seeking to be a party to any sale, lease, or contract involving the judicial branch or any of its offices, if the donee has authority to approve the sale, lease, or contract or if the donee assists or advises the person with authority to approve the sale, lease, or contract.
- (3) A person who will be directly and substantially affected by the performance or nonperformance of the donee's official duties in a way that is greater than the effect on the public generally or on a substantial class of persons to which the donor belongs as a member of a profession, occupation, industry or region.

b. "Honorarium" does not include:

- (1) Actual expenses of a donee for food, beverages, travel, lodging and registration which is given in return for participation at a meeting as a speaker, panel member or facilitator when the expenses relate directly to the day or days on which the donee participates at the meeting, including necessary travel time.
- (2) Payment to an employee for services rendered as part of outside employment which has been approved pursuant to the department's personnel policies, if the payment is commensurate with the actual activity or services rendered and not based upon the employee's position within the department, but, rather, because of some special expertise or other qualification.
- (3) Payment to a judge or magistrate for officiating and making return for a marriage pursuant to rule 22.29.
- (4) Payment to a judge or senior judge for instruction at an accredited education institution, if the payment is commensurate with the actual activity or services rendered and not based upon the judge's official position.
- (5) Payment to a part-time judge for services rendered as part of a bona fide business or profession in which the judge is engaged, if the payment is commensurate with the actual activity or services rendered and not based upon the judge's official position.
- (6) Payment to a senior judge for services rendered as an arbitrator or mediator, if the payment is commensurate with the actual activity or services rendered and not based upon the senior judge's official position. [Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002]

Rule 22.24 Interests in public contracts.

22.24(1) A full-time official or employee of the judicial branch shall not sell any goods or services to any state agency.

22.24(2) As used in this rule, "services" does not include any of the following:

a. Instruction at an accredited education institution by a judge, senior judge or magistrate if permitted as a quasi-judicial or extrajudicial activity pursuant to the Code of Judicial Conduct or by an employee as part of outside employment which has been approved pursuant to the judicial branch's personnel policies.

b. The preparation of a transcript by an official court reporter.

[Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 22.25 Services against the state.

22.25(1) No official or employee of the judicial branch shall receive, directly or indirectly, or enter into an agreement, express or implied, for any compensation, in whatever form, for the appearance or rendition of services against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department.

22.25(2) As used in this rule, "appearance or service against the interest of the state" means an appearance or service which conflicts with a person's duties or employment obligations owed to the state.

[Court Order December 29, 1992, effective January 1, 1993; November 9, 2001, effective February 15, 2002]

Rule 22.26 Personal disclosure.

22.26(1) Each official shall file a statement of personal financial disclosure in the manner provided in this rule. The disclosure must be filed even if there is no financial information to report. The disclosure must contain:

a. A list of each business, occupation, or profession (other than employment by the judicial branch) in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any sources of income (other than income from employment by the judicial branch) if the source produces more than one thousand dollars annually in gross income. "Sources of income" includes those sources which are held jointly with one or more persons and which in total generate more than \$1000 of income. "Jointly" means the ownership of the income source is undivided among the owners and all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income that are co-owned but with ownership interests that are legally divisible, without full rights of use or enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds \$1000. For purposes of this rule, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as a source of income.

Sources of income listed pursuant to this rule may be listed under any of the following categories:

- (1) Securities.
- (2) Instruments of financial institutions.
- (3) Trusts.
- (4) Real estate.
- (5) Retirement systems.
- (6) Other income categories specified in state and federal income tax regulations.

22.26(2) The statement of personal financial disclosure shall be reported on forms adopted by the supreme court and shall be filed with the clerk of the supreme court on or by the first day of April each year or no later than 30 days after assuming office. The statement of personal financial disclosure forms shall be retained for a period of two years.

[Court Order December 29, 1992, effective January 1, 1993; Statement required April 1, 1994; November 9, 2001, effective February 15, 2002; November 22, 2004]

Rule 22.27 Definitions. As used in rules 22.22 to 22.26:

22.27(1) "*Employee*" means a paid employee of the state of Iowa, including independent contractors, and does not include a member of a board, commission, or committee.

22.27(2) "*Official*" means an officer of the judicial branch performing judicial functions, including an associate juvenile judge, a magistrate or referee, an associate probate judge, and the state court administrator, and does not include a member of a board, commission, or committee.

[Court Order December 29, 1992, effective January 1, 1993; July 26, 1996; November 9, 2001, effective February 15, 2002]

Rule 22.28 Transcripts — rates for transcribing a court reporter's official notes.

22.28(1) Pursuant to Iowa Code section 602.3202, the maximum compensation of shorthand reporters for transcribing their official notes shall be as follows:

a. Ordinary transcript (a transcript of all or part of the proceedings) - \$3.50 per page for the original and one copy to the party ordering the original and 50 cents per page for each additional copy.

b. Expedited transcript (a transcript of all or part of the proceedings to be delivered within seven calendar days after receipt of an order) - \$4.50 per page for the original and one copy to the party ordering the original and 75 cents per page for each additional copy.

c. Daily transcript (a transcript of all or part of the proceedings to be delivered following adjournment for the day and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day) - \$5.50 per page for the original and one copy to the party ordering the original and \$1.00 per page for each additional copy.

d. Unedited transcript (an unedited draft transcript produced as a byproduct of realtime or computer aided transcription software to be delivered on electronic media or paper) - \$2.25 per page for the original and 25 cents per page for each copy. The unedited disk or printed draft transcript shall not be certified and may not be used to contradict the official district court transcript.

e. Realtime transcript (an unedited draft transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings for viewing and retention) -

\$2.75 per page for the original and \$1.00 per page for each copy. The unedited text of the proceedings shall not be certified and may not be used to contradict the official district court transcript. Litigants who order realtime services, and subsequently order an original certified transcript of the same proceeding, will not receive credit toward the purchase cost of the certified transcript. Only certified realtime reporters may be compensated for such transcripts.

22.28(2) These rates of compensation shall apply to each separate page of transcript even if they are produced in a condensed transcript format.

22.28(3) These rates of compensation shall be the same whether the transcript is produced in an electronic or paper format. A certified transcript may be sold in an electronic format only if a paper transcript is produced, certified, and filed with the clerk of court for the records of the court or delivered to the custodial attorney. No additional charge is permitted for an ASCII disk or other form of electronic media when it accompanies a paper transcript.

22.28(4) Court reporters are only required to prepare ordinary transcripts. They may, but are not required to, produce the types of transcripts described in rule 22.28(1)(b-e).
[Court Order March 15, 2007; November 9, 2009; May 27, 2010; April 4, 2012]

Rule 22.29 Marriage fees received by a judicial officer.

22.29(1) A judge or magistrate may charge a fee for officiating and making return for each marriage solemnized at a time other than regular judicial working hours and at a place other than a court facility. This fee shall not exceed the sum of \$200.

22.29(2) A judge or magistrate may charge the parties to the marriage for expenses incurred in solemnizing the marriage. In no event shall the expenses charged exceed the maximum amounts set by rules 22.16 through 22.21.

22.29(3) The phrase “regular judicial working hours,” for purposes of this rule, shall mean 8 a.m. to 5 p.m. Monday through Friday (except for legal holidays) for all judicial officers except magistrates, and for them the schedule fixed by the chief judge of the judicial district.
[Court Order July 1, 1983; received for publication April 2, 1984; September 17, 1984; Court Order July 7, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; March 16, 2006]

Rule 22.30 Use of signature facsimile.

22.30(1) In all instances where a law of this state requires a written signature by a justice of the supreme court, judge of the court of appeals, district judge, district associate judge, judicial magistrate, clerk of the district court, county attorney, court reporter, associate juvenile judge, associate probate judge, judicial hospitalization referee, probate referee, or law enforcement officer, any such officer may use, or direct and authorize a designee to possess and use, a facsimile signature stamp bearing that officer’s signature or an electronically scanned signature of the officer pursuant to the provisions of this rule.

22.30(2) Whether used personally by the officer whose signature it bears or by a designee of that officer, a facsimile signature stamp or electronically scanned signature must contain a true facsimile of the actual signature of that officer. The stamp or electronically scanned signature shall be kept in the secure possession of the officer or that officer’s designee at all times, accessible only to the officer or the officer’s designee.

22.30(3) An officer directing and authorizing a designee to possess and use a facsimile signature stamp or electronically scanned signature bearing that officer’s signature shall execute a written designation of the authorization. The designation shall be addressed to the designee, by name or title, and shall specifically identify each category of documents to which the designee is authorized to affix the stamp or electronically scanned signature. The original of the written designation shall be filed with the district court administrator in the judicial district within which the officer is located; appellate judges and justices shall file their original designations with the clerk of the supreme court. A copy of the written designation shall be retained by the officer and by the designee.

22.30(4) A written designation made by an officer pursuant to rule 22.30(3) may be revoked, in writing, at any time by the officer who executed it, and shall stand automatically revoked upon that officer’s ceasing to hold the office for any reason. A written revocation of designation shall be addressed to the former designee, in the same manner as the original designation. A copy of the written revocation shall be retained by the officer and by the former designee. A facsimile signature stamp in the possession of a former designee shall be forthwith returned to the officer who issued it, if available, or shall be destroyed by the former designee. A revoked electronically scanned signature shall be deleted.

22.30(5) Nothing contained in this rule shall abrogate any provision of Iowa Code section 4.1(39). [Court Order May 17, 1984; July 25, 1986, effective September 2, 1986; June 22, 1987, effective August 3, 1987; July 26, 1996; November 9, 2001, effective February 15, 2002; June 3, 2009; March 9, 2010]

Rule 22.31 Juror compensation.

22.31(1) Compensation for a juror's first seven days of attendance and service on a case shall be \$30 per day, including attendance required for the purpose of being considered for service.

22.31(2) When a juror's attendance and service on a case exceed seven days, the rate of compensation shall be \$50 for each day after the seventh day.

22.31(3) For purposes of juror compensation, the days of attendance and service do not have to be consecutive.

[Court Order September 25, 2006; October 22, 2007]

Rule 22.32 Magistrates — annual school of instruction. Each magistrate shall be required to attend a judicial branch school of instruction prior to taking office and annually thereafter unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of instruction that is held following the appointment, unless excused by the chief justice for good cause.

[Court Order September 23, 1985, effective October 15, 1985; November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 22.33 Nepotism. No judicial officer or employee of the judicial branch shall appoint, or continue to employ any person related by consanguinity or affinity within the third degree. This prohibition shall apply to any employment where a direct supervisory relationship exists between the judicial officer or employee and the person supervised.

In the event an employment situation exists within the judicial branch which is consistent with Iowa Code chapter 71 but inconsistent with this rule, the supervisor shall terminate the employment relationship prior to March 15, 1986. Every effort shall be made by the judicial branch to relocate within the branch any individual who is dismissed as a result of this rule.

[Court Order January 22, 1986, effective February 3, 1986; November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 22.34 Judicial branch appointments. It is a policy of the judicial branch that all boards, commissions, and committees to which appointments are made or confirmed by any part of the judicial branch shall reflect, as much as possible, a gender balance. If there are multiple appointing authorities for a board, commission, or committee, they shall consult with each other to avoid contravention of this policy.

[Court Order June 30, 1986, effective July 1, 1986; November 9, 2001, effective February 15, 2002]

Rule 22.35 Service copies.

22.35(1) After April 1, 1988, the clerk of court shall not make a part of the court file, or otherwise retain in the clerk's office, service copies of pleadings, orders, or writs.

22.35(2) "Service copy" means the copy of the pleading, order, or writ attached to either the return of service or the document proving service.

22.35(3) All returns of service shall specify what pleading, order, or writ was served. Returns of service of an original notice shall certify that a copy of the petition was served with the notice pursuant to Iowa R. Civ. P. 1.302.

[Court Order January 29, 1988, effective March 1, 1988; November 9, 2001, effective February 15, 2002]

Rule 22.36 Paper size and requested copies.

22.36(1) Paper size. All pleadings and other papers filed in the Iowa district courts and their small claims divisions shall be on 8½ inch by 11 inch size white paper of standard weight, with a margin of at least one inch at the top of each page. Exhibits attached to pleadings shall be of the same size as pleadings, reduced from their original size if necessary. Original documents, including wills, bonds, notes, foreclosed mortgages, and real estate contracts, may be filed on longer paper. Uniform Citation forms and other court forms smaller than 8½ by 11 inches shall be accepted for filing. The clerks of court shall not accept filings which do not substantially comply with this rule.

22.36(2) Requested copies. If counsel or any party requests file-stamped copies of pleadings or other papers to be returned by mail, an extra copy and a self-addressed, postage prepaid envelope, large enough to accommodate the copy being returned, must be included with the filing. No copy shall be returned by mail unless this rule is followed.

[Court Order May 12, 1989, effective July 3, 1989; March 20, 1991, effective July 1, 1991; November 9, 2001, effective February 15, 2002]

Rule 22.37 Purging of case files.

22.37(1) Each clerk of the district court may purge civil case files ten years after final disposition. For purposes of this rule and rule 22.38, civil case files do not include juvenile, mental health, probate, or adoption proceedings. Each district court clerk may purge criminal case files ten years after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this rule and rule 22.38, “purging” means the removal and destruction of documents in the case file which have no legal, administrative or historical value. The documents are to be retained or discarded in accordance with the purging lists in rule 22.38.

22.37(2) Purging shall be done prior to reproduction of an entire court file in preparation for destruction under Iowa Code section 602.8103. A file shall be purged only once, pursuant to the provisions of this rule in effect at the time of purging.

22.37(3) Each clerk of the district court shall designate either the clerk or a deputy as the “Records Management Specialist.” The records management specialist shall be responsible for implementing office procedures for records management and retention, including the implementation of this rule. The records management specialist shall be the local supervisor who will answer questions about purging any documents not on the lists provided in rule 22.38. Any question not answerable by the records management specialist shall be referred to the district court administrator, who may refer questions to the state court administrator.

22.37(4) The district court clerk need not give notice to any agency, attorney, party, or other group before purging any files under this rule and rule 22.38. Any government agency, historical society, group, or person may request and obtain any or all purged documents upon making written request to the local district court clerk, and tendering payment therefor. District court clerks shall cooperate with reasonable requests of local and state historical societies when implementing purging operations.

22.37(5) Case files will be excepted from this rule only upon court order signed by a majority of the district judges of that district. The order may prohibit purging specific court files in whole or part, and must state the reason for the prohibition.

22.37(6) Purging of case files in proceedings involving parental notification of a minor’s abortion under Iowa Code chapter 135L shall be in accordance with Iowa Ct. R. 8.32(3).

22.37(7) Orders appointing condemnation commissioners shall be retained for five years and then destroyed without reproduction.

22.37(8) One year after filing, district court clerks may destroy, without reproduction, “Confidential Information Forms” filed pursuant to Iowa Code section 602.6111.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 22.38 Purging of case files — lists.

22.38(1) Civil case files.

(A) Retain in files:

- (1) Original notice.
- (2) Petition.
- (3) Return of service—affidavit of publication, certificate of state official (long arm/nonresident motorist, foreign corporations).
- (4) Answer.
- (5) Cross-petition.
- (6) Answer to cross-petition.
- (7) Counterclaim.
- (8) Signed orders (original signed by judge).
- (9) Decisions or decrees of court opinions.
- (10) Amended pleadings (see nos. 2, 4, 5, 6, or 7).

- (11) Writs issued (return of service).
- (12) Entry of judgment.
- (13) Dismissal.
- (14) Jury verdict form (signed).
- (15) Notice of appeal.
- (16) Procedendo from clerk of supreme court.
- (17) Agreement for judgment.
- (18) Offer to confess judgment.
- (19) Acceptance of offer to confess judgment.
- (20) Execution/special execution.
- (21) Return on execution/sheriff's sale.
- (22) Stipulations.
- (23) Partial satisfactions.
- (24) Special appearance.
- (25) Claim for return of seized property.
- (26) Application for forfeiture of seized property.
- (27) Release and/or satisfaction.

(B) Discard from files (EXCEPT in those cases excluded in rule 22.37(1)):

- (1) All duplicates of original documents.
- (2) Bonds.
- (3) Motions/Applications:
 - (a) Amend
 - (b) Change venue
 - (c) Dismiss/demurrer
 - (d) Strike
 - (e) Quash
 - (f) More specific statement
 - (g) Summary judgment
 - (h) Consolidation
 - (i) Stay
 - (j) Compel
 - (k) Sanctions
 - (l) New trial
 - (m) Reconsideration
 - (n) Enlarge and amend
 - (o) Continuance
 - (p) Consolidate or sever
 - (q) Judgment notwithstanding verdict
 - (r) Examinations of judgment debtor
 - (s) Substitute party
 - (t) Withdrawal of attorney
 - (u) Condemn funds
 - (v) Citation for contempt
- (4) Response to any motion.
- (5) Briefs.
- (6) Notice of deposition.
- (7) Deposition transcripts.
- (8) Interrogatories and answers.
- (9) Notice of interrogatories.
- (10) Request for production.
- (11) Response to request for production.

- (12) Request for admissions and responses.
- (13) Pretrial compliance reports.
- (14) Trial certificates.
- (15) Objections to trial certificate.
- (16) Subpoenas.
- (17) Proposed jury instructions.
- (18) Witness lists; exhibits lists.
- (19) Correspondence.
- (20) Directions to sheriff for service.
- (21) Demand for jury trial.
- (22) Certificate of reporters re: costs of or taking deposition.
- (23) Order condemning funds.
- (24) Scheduling order or notices.
- (25) Orders that only set hearings.
- (26) Strike list notices.
- (27) Warrant for arrest of contemnor.
- (28) Entry of default.
- (29) Jury instructions.
- (30) Receipts for exhibits.
- (31) Praecipe.
- (32) Affidavit of amount due.
- (33) Affidavit of payments made.

22.38(2) Criminal case files.

(A) Retain in files:

- (1) Trial information and minutes of testimony.
- (2) Indictment.
- (3) Amended trial information.
- (4) Written plea of guilty.
- (5) Opinion or decision of court.
- (6) All orders of court, except those only setting a hearing.
- (7) Jury instructions.
- (8) Jury verdict (signed).
- (9) Notice of appeal.
- (10) Procedendo from clerk of supreme court.
- (11) Notice of dismissal of appeal.
- (12) Judgment entry.
- (13) Sentencing entry.
- (14) Presentence investigation report and associated reports.

(B) Discard from files (EXCEPT in those cases excluded in rule 22.37(1)):

- (1) All duplicates of original documents.
- (2) All copies and originals of jail booking forms and receipts.
- (3) All subpoenas issued and returned.
- (4) Written stipulations.
- (5) Warrant for arrest.
- (6) Return on warrant.
- (7) Bail bonds.
- (8) Recognizance agreements to appear.
- (9) Written arraignment.
- (10) Motions:
 - (a) To suppress and response

- (b) Change of venue and response
 - (c) Limine and response
 - (d) To dismiss and response
 - (e) To sever trial and response
 - (f) Bill of particulars and response
 - (g) To amend trial information
 - (h) For appointment of counsel
 - (i) For withdrawal of counsel
 - (j) To determine competency
 - (k) To consolidate trial
 - (l) For continuance
 - (m) To correct sentence
 - (n) Reduction of bail or review conditions of release
 - (o) To revoke bail or pretrial release
 - (p) To forfeit bail
 - (q) To compel
- (11) Orders that only set hearings.
 - (12) Briefs.
 - (13) Proposed or requested jury instructions.
 - (14) Pretrial conference reports, minutes, or orders.
 - (15) Notices of depositions.
 - (16) Scheduling notices.
 - (17) Requests for transcripts.
 - (18) Registered mail receipt cards or letters returned.
 - (19) Receipts for evidence.
 - (20) Correspondence from attorneys.
 - (21) Nonsubstantive correspondence from defendants.
 - (22) Application to revoke probation, or to adjudicate guilt, or to revoke deferred judgment.
 - (23) Magistrate's transcript.
 - (24) Complaint forms.
 - (25) Media coordinator requests.
 - (26) Appearance of attorney.
 - (27) Witness lists.
 - (28) Notice of special defense, (i.e., insanity, intoxication, alibi, duress, etc.)
 - (29) Iowa R. Crim. P. 2.14(2)(a), disclosure required upon receipt (Notice).
 - (30) Application for search warrant.
 - (31) Return on search warrant.

22.38(3) Divorce/Dissolution of Marriage/Separate Maintenance/Child Support and Paternity case files.

(A) Retain in files:

- (1) Original notice.
- (2) Petition for divorce, separate maintenance, dissolution of marriage, child support, or to determine paternity.
- (3) Return of service—affidavit of publication.
- (4) Acceptance of service.
- (5) Answer.
- (6) Cross-petition.
- (7) Answer to cross-petition.
- (8) Signed orders (original signed by judge).
- (9) Decrees or decisions of court.
- (10) Amended pleadings (see nos. 2, 5, 6, or 7).

- (11) Writs issued (return of service).
- (12) Entry of default.
- (13) Dismissal.
- (14) Notice of appeal.
- (15) Procedendo from clerk of supreme court.
- (16) Paternity test results.
- (17) Petition or application for modification.
- (18) Answer to petition or application for modification.
- (19) Order for temporary support or temporary custody.
- (20) Stipulations.
- (21) Execution/special execution.
- (22) Satisfaction/partial satisfaction.
- (23) Appearance by attorney or party.
- (24) Assignments of judgments and terminations of assignments.
- (25) Financial affidavits.
- (26) Child support worksheets.
- (27) Confidential information required under Iowa Code section 598.22B.

(B) Discard from files:

- (1) All duplicates of original documents.
- (2) Bonds.
- (3) Motions/applications:
 - (a) Amend
 - (b) Change venue
 - (c) Dismiss/demurrer
 - (d) Strike
 - (e) Quash
 - (f) More specific statement
 - (g) Stay
 - (h) Compel
 - (i) Sanctions
 - (j) New trial
 - (k) Reconsideration
 - (l) Enlarge and amend (Iowa R. Civ.P. 1.904(2))
 - (m) Continuance
 - (n) Examinations of judgment debtor
 - (o) Withdrawal of attorney
 - (p) Condemn funds
 - (q) Citation for contempt
- (4) Response to any motion.
- (5) Briefs.
- (6) Notice of deposition.
- (7) Depositions transcripts.
- (8) Interrogatories and answers to interrogatories.
- (9) Notice of interrogatories.
- (10) Requests for production.
- (11) Response to requests for production.
- (12) Requests for admissions and responses.
- (13) Trial certificates.
- (14) Objections to trial certificates.
- (15) Subpoenas.
- (16) Correspondence.

- (17) Directions to sheriff for service.
- (18) Certificate of reporters re: costs of or taking depositions.
- (19) Order condemning funds.
- (20) Scheduling order or notices.
- (21) Orders that only set hearings.
- (22) Warrant for arrest of contemnor.
- (23) Strike list notices.
- (24) Receipts for exhibits.
- (25) Proof of service by Child Support Recovery Unit.
- (26) Certificate of completion of parent education program.

[Court Order February 17, 1989, effective April 15, 1989; July 26, 1996; October 3, 1997; November 25, 1998; October 27, 1999; November 9, 2001, effective February 15, 2002]

Rule 22.39 Staffing offices of clerks of court. The supreme court shall allocate staff to the clerk of court office in each county. The court shall take into account workload and availability of funds for state court operations. The court shall set the business hours of each office. To facilitate case processing, the court may allow each office of the clerk of court to operate without being open to the public for a portion of each day the office is open for business to enable an office to process its work without interruption.

[Court Order November 12, 2009]

Rule 22.40 Public business hours of offices of clerks of court. For purposes of Iowa Code section 4.1(34), the word “day” means the period of time defined by the public business hours of an office of the clerk of court as established by order of the supreme court. If the supreme court has by order closed an office of the clerk of court for an entire day, that day shall be treated as a holiday or a weekend. Nothing in this rule shall prevent a party from filing with the court pursuant to Iowa Rule of Civil Procedure 1.442(5).

[Court Order November 12, 2009]

CHAPTER 31 ADMISSION TO THE BAR

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CHAPTER 31 ADMISSION TO THE BAR

Rule 31.1 Board of law examiners.

31.1(1) *Composition.*

a. The board of law examiners shall consist of five persons admitted to practice law in this state and two persons not admitted to practice law in this state. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state.

b. Appointment shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than three terms or nine years, whichever is less.

c. The members thus appointed shall sign a written oath to faithfully and impartially discharge the duties of the office and shall file the oath in the office of professional regulation. They shall be compensated for their services in accordance with the provisions of Iowa Code section 602.10106.

d. The supreme court may appoint temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

e. The members of the board of law examiners and the temporary examiners shall be paid a per diem in an amount to be set by the supreme court for each day spent in conducting the examinations of the applicants for admission to the bar and in performing and conducting administrative duties and shall also be reimbursed for additional expenses necessarily incurred in the performance of such duties.

f. The assistant director for admissions of the office of professional regulation shall serve as the principal administrator for the board of law examiners. Wherever in this chapter a reference to the "assistant director" appears, it shall refer to the assistant director for admissions of the office of professional regulation.

g. The board shall have an administrative committee consisting of the chair, the director of the office of professional regulation and a nonattorney member of the board appointed by the court. The administrative committee shall, at least 60 days prior to the start of each fiscal year, submit to the court for consideration and approval a budget covering the board's operations for the upcoming fiscal year. Approval of the budget by the court shall authorize payment as provided in the budget. A separate bank account designated as the admissions operating account shall be maintained for payment of authorized expenditures as provided in the approved budget. Fees or other funds received or collected as directed in this chapter or in accordance with an approved interagency agreement shall be deposited in the admissions operating account for payment of the board's authorized expenditures.

h. Claims against members of the board and the director, assistant directors, and the staff of the office of professional regulation are subject to the Iowa Tort Claims Act set forth in Iowa Code chapter 669.

i. The board of law examiners and its members, employees, and agents; temporary law examiners; and the director, assistant directors, and the staff of the office of professional regulation are immune from all civil liability for damages for conduct, communications, and omissions occurring in the performance of and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

j. Records, statements of opinion, and other information regarding an applicant for admission to the bar communicated by any entity, including any person, firm, or institution, without malice, to the board of law examiners, its members, employees, or agents, or to the director, assistant director, and the staff of the office of professional regulation are privileged, and civil suits for damages predicated thereon may not be instituted.

31.1(2) *Duties.*

a. The board may adopt rules to govern the method of conducting the bar examination. Such rules shall be consistent with these rules and are subject to supreme court approval.

b. The authority to pass on the sufficiency of applications for permission to take the bar examination is vested in the board of law examiners, subject to review by the supreme court.

c. The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall also recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character and fitness requirements. The board, in its discretion, may permit an applicant to take the bar examination prior to finally approving that

person as to character and fitness. It may impose specific conditions for admission based on its evaluation of character and fitness and shall withhold recommendation of admission until those conditions are satisfied. An applicant who passes the bar examination shall satisfy such character and fitness conditions and any other conditions imposed by the board within one year of the date of the applicant's passage of the examination. This period may be extended by the board upon the applicant's showing of good cause. If any conditions imposed are not satisfied within the applicable period of time, the applicant's passage of the examination is null and void and the applicant must retake the bar examination in order to gain admission. The supreme court shall make the final determination as to those persons who shall be admitted to practice in this state.

[Court Order July 2, 1975; September 20, 1976; April 17, 1990, effective June 1, 1990; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; November 9, 2001, effective February 15, 2002; February 14, 2008, effective April 1, 2008; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 31.2 Registration by law students.

31.2(1) Every person intending to apply for admission to the bar of this state by examination shall, by November 1 of the year in which the person commences the study of law in an accredited law school, register with the Iowa board of law examiners on forms furnished by the board and pay the required fee of \$25. The board may designate data submitted as a confidential record. Any confidential data shall be segregated by the board and the assistant director from the portion of the registration filed as a public record.

31.2(2) If any person shall fail to so register, the board may, if it finds that a strict enforcement of this rule would work a hardship and that sufficient excuse exists for failing to comply with rule 31.2(1), waive the requirements of this rule as to the date of filing. Refusal of the board to waive such requirement shall be subject to review by the supreme court. If the registration is not on file by the November 1 registration deadline, but is on file by December 1 preceding the July examination or July 1 preceding the February examination, the registration fee will be \$75. If the registration is not on file by the November 1 registration deadline, but is on file by April 1 preceding the July examination or November 1 preceding the February examination, the registration fee will be \$150. This fee is not refundable and shall be in addition to the fee required under rule 31.6. The failure to file the registration by the November 1 deadline of rule 31.2(1) may result in delays in conducting the board's character and fitness investigation. The board will not expedite its character and fitness investigation because the registration form is not timely filed. The registrant will not be eligible for admission to the bar until the character and fitness process is completed.

31.2(3) Registration as a law student under this rule is not deemed an application for permission to take the bar examination.

31.2(4) The registration shall be accompanied by letters prepared by three persons not related to applicant by consanguinity or affinity attesting to the registrant's good moral character.

31.2(5) The board shall review each registration and may require the personal presence of any registrant at such time and place as the board may prescribe for interview and examination concerning the registrant's character and fitness. The board may at any time find it advisable to make further inquiry into the character, fitness and general qualifications of the registrant, and with regard to each registration, the board shall have all of the powers given it in respect to inquiry and investigation of candidates for admission to the bar.

[Court Order July 2, 1975; September 20, 1976; December 16, 1983—received for publication May 30, 1984; February 16, 1990, effective March 15, 1990; April 16, 1992, effective July 1, 1992; March 26, 1993, effective July 1, 1993; December 2, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 112); November 9, 2001, effective February 15, 2002; June 5, 2008, effective July 1, 2008; April 9, 2009]

Rule 31.3 Required examinations.

31.3(1) *Iowa bar examination.* Beginning with the February 2009 administration of the Iowa bar examination, the provisions of this rule shall apply to the dates and content of the bar examination.

a. Written examinations for admission to the bar shall be held in Polk County, Iowa, commencing with a mandatory orientation session on the Monday preceding the last Wednesday in February and on the Monday preceding the last Wednesday in July.

b. The examination shall consist of three components: the Multistate Essay Examination (MEE), the Multistate Bar Examination (MBE), and the Multistate Performance Test (MPT). There shall be one three-hour MEE session consisting of six questions, one MPT session consisting of two 90-minute

performance tests, and two MBE sessions consisting of 100 multiple-choice questions each. The MEE portion of the examination shall consist of questions selected by the board from the following subjects:

- (1) Business associations
 1. Agency and partnership
 2. Corporations and LLCs
- (2) Conflict of laws
- (3) Constitutional law (Federal)
- (4) Contracts (including Uniform Commercial Code (Sales) (Art. 2))
- (5) Criminal law and procedure
- (6) Evidence (based on the Federal rules of evidence)
- (7) Family law
- (8) Federal civil procedure
- (9) Real property
- (10) Torts
- (11) Trusts and Estates
 1. Decedents' estates
 2. Trusts and future interests
- (12) Uniform Commercial Code
 1. Negotiable instruments (Commercial Paper) (Art. 3)
 2. Secured transactions (Art. 9)

Some MEE questions may include issues from more than one area of law. Conflict of laws issues are embedded in the other MEE topic areas. They do not appear as stand-alone questions. Uniform Commercial Code issues may require the applicants to know the general principles and applicable definitions set forth in Art. 1. Complete subject matter outlines for the MEE are available on the website of National Conference of Bar Examiners.

c. Applicants must achieve a combined scaled score of 266 or above in order to pass the examination. All passes and all failures shall be on a vote of at least four members of the board of law examiners admitted to practice law in Iowa.

31.3(2) *Multistate Professional Responsibility Examination.* Every applicant for admission to practice law in the state of Iowa must have on file with the assistant director examination results from the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners no later than April 1 preceding the July examination or November 1 preceding the February examination. Each applicant must obtain a scaled score of at least 80 in order to be admitted to practice law in Iowa. MPRE scores shall only be accepted for three years after the date the MPRE is taken.

It is the responsibility of the applicant to ensure that a score report from the National Conference of Bar Examiners is sent to the assistant director by the date indicated above.

[Court Order July 2, 1975; September 17, 1984; October 23, 1985, effective November 1, 1985; January 3, 1996; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 101); July 26, 1996; September 12, 1996; October 3, 1997; July 11, 2000; November 9, 2001, effective February 15, 2002; August 28, 2006; June 5, 2008, effective July 1, 2008; September 17, 2008]

Rule 31.4 Transfer and banking of MBE scaled scores.

31.4(1) Applicants may transfer any MBE scaled score they received in another jurisdiction from one of the last four administrations of the MBE immediately preceding the deadline for filing the application for the Iowa bar examination. Applicants must indicate their intent to transfer an MBE score on their bar application. The applicant's MBE score from a prior examination must be certified from the other jurisdiction or the National Conference of Bar Examiners by November 1 preceding the February examination and by April 1 preceding the July examination. Applicants may not transfer MBE scaled scores from a concurrent administration of the test.

31.4(2) Applicants may rely upon an MBE scaled score obtained on one of the last four Iowa bar examination administrations immediately preceding the deadline for filing the application for a subsequent bar examination. Applicants choosing to rely upon their prior MBE scaled score shall indicate their intention on the bar application form.

31.4(3) Applicants who choose to rely on a transferred or banked MBE scaled score shall only be required to take the MPT and MEE portions of the bar examination. Such applicants will not be permitted to take the MBE portion of the examination. Applicants who fail to meet the above

deadlines for indicating their intention to transfer or bank MBE scores will not be allowed to do so and must sit for all portions of the Iowa examination. It is the applicant's responsibility to ensure that the scaled MBE score is sent to the assistant director by the pertinent date indicated above.

[Court Order June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 102); November 9, 2001, effective February 15, 2002; June 5, 2008, effective July 1, 2008; September 17, 2008]

Rule 31.5 Bar examination application—contents and deadlines.

31.5(1) The board of law examiners and the assistant director shall prepare such forms as may be necessary for application for examination. The application shall require the applicant to demonstrate the applicant is a person of honesty, integrity, and trustworthiness, and one who appreciates and will adhere to the Iowa Rules of Professional Conduct as adopted by the supreme court, together with such other information as the board and the assistant director determine necessary and proper.

31.5(2) Every applicant for admission to the bar shall make application, under oath, and upon a form furnished by the assistant director. The applicant shall file the application with the assistant director no later than April 1 preceding the July examination or November 1 preceding the February examination. An applicant who fails the Iowa bar examination and wants to take the next examination must file a new application within 30 days of the date the applicant's score is posted in the office of professional regulation. There shall be no waiver of these deadlines. If any changes occur after the application is filed which affect the applicant's answers, the applicant must amend the application. A new and complete application shall be filed for each examination for admission.

31.5(3) The board may designate portions of the data submitted for this purpose by the applicant or third parties as a confidential record. The board and the assistant director shall segregate that portion of the application data deemed confidential from the portion which is filed as a public record. In the event of a request for a hearing on character or fitness under rule 31.11(4) following an initial determination by the board, it may designate any additional information received at the hearing and all proceedings before the board as a confidential record.

[Court Order October 14, 1968; July 2, 1975; November 21, 1977; March 20, 1987, effective June 1, 1987; February 16, 1990, effective March 15, 1990; March 26, 1993, effective July 1, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 103); November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; June 20, 2007, effective July 1, 2007; June 5, 2008, effective July 1, 2008; September 17, 2008]

Rule 31.6 Fee. Every applicant for admission to the bar upon examination shall, as a part of the application, remit to the Iowa board of law examiners a fee in the amount of \$325. This fee is not refundable and cannot be applied to a subsequent application.

[Court Order July 2, 1975; December 16, 1983—received for publication May 30, 1984; April 16, 1992, effective July 1, 1992; March 26, 1993, effective July 1, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 113); October 11, 2001; November 9, 2001, effective February 15, 2002]

Rule 31.7 Affidavit of intent to practice. All applicants for the Iowa bar examination shall demonstrate a bona fide intention to practice law in Iowa. This showing must be by affidavit made before an officer authorized to administer oaths and having a seal.

The affidavit must include the applicant's designation of the clerk of the supreme court as the applicant's agent for service of process in Iowa for all purposes.

[Court Order July 2, 1975; November 21, 1977; October 28, 1982; December 30, 1983; April 25, 1985; March 23, 1994, effective July 1, 1994; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 105); November 9, 2001, effective February 15, 2002]

Rule 31.8 Degree requirement. No person shall be permitted to take the examination for admission without proof that the person has received the degree of LL.B. or J.D. from a reputable law school fully approved by the American Bar Association. Proof of this requirement shall be by affidavit of the dean of such law school, and shall show that the applicant has actually and in good faith pursued the study of law resulting in the degree required by this rule. The affidavit must be made before an officer authorized to administer oaths and having a seal.

If an applicant is a student in such a law school and expects to receive the degree of LL.B. or J.D. within 45 days from the first day of the July or February examination, the applicant shall be permitted to take the examination upon the filing of an affidavit by the dean of said school stating that the dean expects the applicant to receive such a degree within this time. No certificate of admission or license

to practice law shall be issued until the applicant has received the required degree. If the applicant fails to obtain the degree within the 45-day period, the results of the applicant's examination shall be null and void.

[Court Order July 15, 1963; February 9, 1967; December 30, 1971; February 15, 1973; July 2, 1975; November 21, 1977; June 13, 1983; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 106); May 2, 1997; November 9, 2001, effective February 15, 2002]

Rule 31.9 Moral character and fitness.

31.9(1) The Iowa board of law examiners shall make an investigation of the moral character and fitness of any applicant and may procure the services of any bar association, agency, organization, or individual qualified to make a moral character or fitness report.

a. Immediately upon the filing of the application, the chair of the Iowa board of law examiners shall notify the president of a local bar association and the county attorney of the county in which the applicant resides of the filing of the application. If either of said officers is possessed of information which reflects adversely on the moral character or fitness of the applicant, such information shall be transmitted to the chair of the board of law examiners not less than 60 days in advance of the holding of the examination.

b. The Iowa board of law examiners shall, subject to supreme court review, determine whether or not the applicant is of good moral character and fitness.

31.9(2) *Denial of permission to take bar examination; denial of recommendation for admission.* When the board of law examiners determines that any person who registers or makes application should not be permitted to take a bar examination, or that an applicant who has passed a bar examination should not be recommended for admission to practice law in Iowa, the board shall notify the applicant in writing of its determination.

a. The notice shall provide that the applicant is entitled to a hearing to challenge the determination upon filing a written request for hearing with the assistant director within 10 days after service of the notice.

b. The assistant director shall serve the notice on the applicant by mail to the address shown on the applicant's application.

c. If no request for hearing is filed, the board's determination shall be final and not subject to review.

d. If a request for hearing is filed, the chair of the board shall appoint an attorney member of the board to act as a hearing officer. The hearing officer shall promptly set a hearing, and the assistant director shall notify the applicant by mail at least 10 days before the hearing date of the time and place of hearing.

e. Not less than 10 days before the hearing date, the board shall furnish the applicant with copies of all document and summaries of all other information the board relied on in making its determination.

f. The clerk of court in the county where the hearing is held shall have authority to issue any necessary subpoenas for the hearing.

g. At the hearing, the applicant shall have the right to appear in person and by counsel. The board may be represented by the attorney general of the state of Iowa or a duly appointed assistant attorney general. The hearing shall be reported. The hearing officer shall take judicial notice of the information the board considered in the case and shall consider such additional evidence and arguments as may be presented at the hearing. At the hearing, the board shall first present any additional evidence or information that it deems necessary to the proceeding. Thereafter the applicant shall present evidence. The attorney for the board may offer rebuttal evidence at the discretion of the hearing officer. In presiding at the hearing, the hearing officer shall have the power and authority administrative hearing officers possess generally.

h. Within 30 days after completion of the hearing, the hearing officer shall provide the board with a hearing transcript, exhibits, and findings of fact and conclusions of law. Based on this information, the board shall prepare and file its final determination with the assistant director. The assistant director shall, by mail, promptly notify the applicant of the board's final determination.

31.9(3) *Supreme court review.* Any applicant aggrieved by a final determination of the board made pursuant to rule 31.9(2) may file a petition requesting review of the determination in the supreme court within 20 days of the mailing of notice of final determination. The petition must be accompanied by a \$150 fee. If no such petition is filed within the 20-day period, the board's determination shall not be subject to review. A petition for review shall state all claims of error and reasons for challenging the board's determination. The board shall transmit to the supreme court its files and complete record

in the case. Unless the court orders otherwise, the petition shall be deemed submitted for the court's review on the record previously made. After consideration of the record, the court shall enter its order sustaining or denying the petition. The order of the court shall be conclusive. No subsequent application for admission by a person denied under rule 31.9(2) shall be considered by the board unless authorized by the court upon the applicant's motion accompanied by a prima facie showing of a substantial change of circumstances.

31.9(4) *Costs of review.* In the event an applicant or person who is registered petitions for review under rule 31.9(3) and is unsuccessful, the costs of the appeal shall be taxed against the unsuccessful applicant and judgment therefor may be entered in the district court of that person's county of residence, if an Iowa resident, or in the district court for Polk County if a nonresident.

31.9(5) *Failure to comply with support order.* The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who fails to comply with a support order.

a. Procedure. The Child Support Recovery Unit (CSRU) shall file any certificate of noncompliance that involves an applicant with the clerk of the supreme court. The procedure, including notice to the applicant, shall be governed by Iowa Ct. R. 35.20(1), except that the notice shall refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing from the applicant, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by Iowa Ct. R. 35.20(2).

c. Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the supreme court.

d. Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court and the director of the office of professional regulation are authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify applicants subject to enforcement under Iowa Code chapter 252J or 598.

31.9(6) The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who defaults on an obligation owed to or collected by the College Student Aid Commission.

a. Procedure. The College Student Aid Commission (the commission) shall file any certificate of noncompliance that involves an applicant with the clerk of the supreme court. The procedure, including notice to the applicant, shall be governed by Iowa Ct. R. 35.21(1), except that the notice shall refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing from the applicant, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by Iowa Ct. R. 35.21(2).

c. Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the court.

31.9(7) The supreme court may refuse to issue a license to practice law to an applicant for admission to the bar by examination or on motion who defaults on an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue (CCU).

a. Procedure. The CCU shall file any certificate of noncompliance that involves an applicant with the clerk of the supreme court. The procedure, including notice to the applicant, shall be governed by Iowa Ct. R. 35.22(1), except that the notice shall refer to a refusal to issue a license to practice law to the applicant instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing from the applicant, the clerk of the district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by Iowa Ct. R. 35.22(2).

c. Noncompliance certificate withdrawn. If a withdrawal of a certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if

necessary, shall immediately take such steps as are necessary to issue a license to the applicant if the applicant is otherwise eligible under rules of the supreme court.

d. Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court and the director of the office of professional regulation are authorized to share information with the CCU for the sole purpose of allowing the CCU to identify applicants subject to enforcement under Iowa Code chapter 272D.

[Court Order July 2, 1975; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 104); December 20, 1996; November 25, 1998; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 31.10 Preservation of anonymity. Each applicant permitted to take the bar examination shall be randomly assigned a number at the beginning of the examination, by which number the applicant shall be known throughout the examination.

Either the assistant director or the director of the office of professional regulation, or their representatives, shall prepare a list of the applicants, showing the number assigned to each at the beginning of the examination, certify to such facts, seal said list in an envelope immediately after the beginning of said examination and retain the same sealed, in their possession, unopened until after the applicant's score has been properly recorded. The envelope shall then be opened in the presence of the Iowa board of law examiners and the correct name entered opposite the number assigned to each applicant, in the presence of the Iowa board of law examiners.

[Court Order July 2, 1975; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 107); November 9, 2001, effective February 15, 2002; June 5, 2008, effective July 1, 2008]

Rule 31.11 Automatic review.

31.11(1) Score range for review. An applicant whose combined, scaled score on the current examination is at least 260, but less than 266, shall have an automatic review of the written portion of the bar examination prior to release of the bar examination results.

31.11(2) Procedures for automatic review. The board shall apply the following procedures for applicants eligible for an automatic review:

a. The attorney members of the board and any temporary examiners the board may designate will review the applicant's written answers. The answers shall be submitted on an anonymous basis without oral argument or hearing. If it appears that an answer should receive a different score (whether higher or lower), that score will be used to determine the applicant's scaled score. The board shall maintain a record of any changes made to the scoring of the individual questions on review.

b. Following its review, the board shall recommend to the supreme court that the applicant be admitted to the practice of law in Iowa if the applicant's combined, scaled score after review is at least 266. An applicant whose combined, scaled score after review is 265 or below shall be deemed to have failed the examination.

31.11(3) Supreme court review. An unsuccessful applicant whose combined, scaled score on the bar examination is at least 260, but less than 266, may file a petition requesting review of the board's determination in the supreme court. The petition shall be filed with the clerk of the supreme court and served upon the board. The petition must be filed within 20 days of the date the applicant's score is posted in the office of professional regulation and must be accompanied by a \$150 fee. If no such petition is filed within the 20-day period, the board's determination shall not be subject to review. The petition for review shall identify all answers the applicant requests the supreme court to review and state the reasons for challenging the board's determination. The board shall transmit to the supreme court the complete record in the case. Unless the court orders otherwise, the petition shall be deemed submitted for the court's review on the record previously made. After consideration of the record, the court shall enter its order sustaining or denying the petition. The order of the court shall be conclusive. [Court Order July 2, 1975; September 20, 1976; April 25, 1985; March 31, 1986, effective May 1, 1986; April 17, 1990, effective June 1, 1990; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 117.1) July 19, 1999; November 9, 2001, effective February 15, 2002; June 20, 2007, effective July 1, 2007; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 31.12 Admission of attorneys from other jurisdictions—requirements and fees.

31.12(1) An applicant who meets the requirements of this rule and rule 31.13 may, in the discretion of the court, be admitted to the practice of law in this state without examination.

31.12(2) The applicant shall file the application with the National Conference of Bar Examiners through their online character and fitness application process at <http://www.ncbex.org/ea> unless an exception is granted by the Office of Professional Regulation. The applicant shall pay a nonrefundable administrative fee of \$325 to the Office of Professional Regulation at the time of filing the application. The character investigation services of the National Conference of Bar Examiners shall be procured in all cases where application for admission on motion is made. The applicant shall pay an investigative fee of \$300 to the National Conference of Bar Examiners at the time of filing the application.

31.12(3) The application and supporting affidavits, which shall contain specific facts and details as opposed to conclusions and which shall be made before an officer authorized to administer oaths, must demonstrate the following:

a. The applicant has been admitted to the bar of any other state of the United States or the District of Columbia, has practiced law five full years while licensed within the seven years immediately preceding the date of the application, and still holds a license.

b. The applicant is a person of honesty, integrity, and trustworthiness, and one who will adhere to the Iowa Rules of Professional Conduct. In evaluating this factor the court may consider any findings filed with the Office of Professional Regulation by the Commission on the Unauthorized Practice of Law pursuant to Iowa Ct. R. 37.3.

c. The applicant is not currently subject to lawyer discipline in any other jurisdiction.

31.12(4) The applicant shall provide such information as the court deems necessary and proper in connection with the application. If any changes occur that affect the applicant's answers, the applicant must immediately amend the application.

31.12(5) The applicant shall designate the supreme court clerk for service of process.

31.12(6) For purposes of this rule, the practice of law shall include the following activities:

a. Representation of one or more clients in the practice of law.

b. Service as a lawyer with a local, state, or federal agency.

c. The teaching of law as a full-time instructor in a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association in this state or some other state.

d. The discharge of actual legal duties as a member of one of the armed services of the United States, if certified as the practice of law by the judge advocate general of such service.

e. Service as a judge in a federal, state, or local court of record.

f. Service as a judicial law clerk.

g. Service as corporate counsel.

h. Service as an employee or officer of any business, but only if such service would ordinarily constitute the practice of law and was performed in a jurisdiction in which the applicant has been admitted to practice.

31.12(7) For purposes of this rule, the practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

31.12(8) The following applicants shall not be eligible for admission on motion:

a. An applicant who has failed a bar examination administered in this state within five years of the date of filing of the application under this rule.

b. An applicant who has failed five or more bar examinations.

[Court Order July 2, 1975; September 20, 1976; February 12, 1981; Note September 30, 1981; Court Order December 17, 1982; December 30, 1983; April 23, 1985; November 8, 1985; March 31, 1986, effective May 1, 1986; November 21, 1991, effective January 2, 1992; November 30, 1994, effective January 3, 1995; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 114); May 2, 1997; October 11, 2001; November 9, 2001, effective February 15, 2002; February 22, 2002; April 20, 2005, effective July 1, 2005; August 6, 2007; February 14, 2008, effective April 1, 2008; October 15, 2008; August 10, 2009; January 19, 2010]

Rule 31.13 Proofs of qualifications; oath or affirmation.

31.13(1) *Required certificates, affidavit, and fingerprint card.* The following proofs must be filed with the Office of Professional Regulation to qualify an applicant for admission under rule 31.12:

a. A certificate of admission in the applicant's state of licensure.

b. A certificate of a clerk or judge of a court of record, or of a judge advocate general or an administrative law judge, that the applicant was regularly engaged in the practice of law in said state for five years. If, due to the nature of the applicant's practice, the applicant cannot obtain a

certificate from a clerk, judge, judge advocate general, or an administrative law judge, the applicant shall file a petition seeking leave to file an alternative certificate demonstrating good cause why the certificate cannot be obtained. If the supreme court grants the petition, the applicant shall file an affidavit detailing the nature, dates, and locations of the applicant's practice, along with an affidavit of a supervising attorney or another lawyer attesting to the applicant's practice over that period.

c. A certificate of an applicant's good moral character from a judge or clerk of the Iowa district court or of a court where the applicant has practiced within the last five years.

d. A completed fingerprint card.

31.13(2) Oath or affirmation.

a. An applicant whose application for admission without examination is granted must appear for admission before a supreme court justice unless the supreme court orders otherwise based upon a satisfactory showing of exceptional circumstances.

b. An applicant may file a petition seeking permission to be administered the lawyer's oath or affirmation in the jurisdiction in which the applicant is currently licensed or before a judge advocate general if the applicant is currently a member of one of the armed services of the United States. The petition must set forth in detail: the exceptional circumstances that render the applicant unable to appear for admission before a justice of the supreme court of Iowa in light of the applicant's professed intention to practice law in Iowa; the name, title, business address, and telephone number of the justice, judge, clerk of court, court administrator, or the judge advocate general who will administer the lawyer's oath or affirmation; and the statute or court rule authorizing that person to administer an oath or affirmation.

c. If the supreme court grants the petition, the Office of Professional Regulation shall forward all required documents to the applicant. The applicant will be deemed admitted to the Iowa bar on the date the completed documents are filed with the Office of Professional Regulation.

d. The applicant must take the lawyer's oath or affirmation from an Iowa justice, or file the completed paperwork from an out-of-state oath or affirmation, within six months after the date the application for admission on motion is granted or the application will be deemed to be denied.

[Court Order July 2, 1975; December 30, 1982; December 30, 1983; April 23, 1985; November 8, 1985; January 17, 1995, effective March 1, 1995; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 115); November 9, 2001, effective February 15, 2002; May 31, 2006; October 31, 2006; February 14, 2008, effective April 1, 2008; October 15, 2008; January 19, 2010]

Rule 31.14 Admission pro hac vice before Iowa courts and administrative agencies.

31.14(1) Definitions.

a. An "out-of-state" lawyer is a person who:

(1) Is not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia, or is licensed to practice as a foreign legal consultant in any state or territory of the United States or of the District of Columbia; and

(2) Is not disbarred or suspended from practice in any jurisdiction.

b. An out-of-state lawyer is "eligible" for admission pro hac vice if any of the following conditions are satisfied:

(1) The lawyer lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work.

(2) The lawyer neither resides nor is regularly employed at an office in this state.

(3) The lawyer resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

c. An "in-state" lawyer is a person admitted to practice law in this state and is not disbarred or suspended from practice in this state.

d. A "client" is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this state.

e. "This state" refers to Iowa. This rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this rule.

31.14(2) Authority of court or agency to permit appearance by out-of-state lawyer.

a. *Court proceeding.* A court of this state may, in its discretion, admit an eligible out-of-state lawyer, who is retained to appear as attorney of record in a particular proceeding, only if the out-of-state lawyer appears with an in-state lawyer in that proceeding.

b. Administrative agency proceeding. If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding as counsel in that proceeding pro hac vice, only if the out-of-state lawyer appears with an in-state lawyer in that proceeding.

c. Subsequent proceedings. Admission pro hac vice is limited to the particular court or agency proceeding for which admission was granted. An out-of-state lawyer must separately seek admission pro hac vice in any subsequent district or appellate court proceeding.

31.14(3) In-state lawyer's duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to do all of the following:

- a.* Appear of record together with the out-of-state lawyer in the proceeding.
- b.* Actively participate in the proceeding. See Iowa R. of Prof'l Conduct 32:5.5(c)(1).
- c.* Accept service on behalf of the out-of-state lawyer as required by Iowa Code section 602.10111.
- d.* Advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer.

31.14(4) Application procedure. An eligible out-of-state lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court or agency where the litigation is filed. The out-of-state lawyer shall serve the application on all parties who have appeared in the proceeding, and shall include proof of service. Application forms for admission pro hac vice can be found in rule 31.25.

31.14(5) Required information for application. An application filed by the out-of-state lawyer shall contain all of the following information:

- a.* The out-of-state lawyer's residence and business addresses.
- b.* The name, address, and phone number of each client sought to be represented.
- c.* The courts before which the out-of-state lawyer has been admitted to practice and the respective period of admission and any jurisdiction in which the out-of-state lawyer has been licensed to practice as a foreign legal consultant and the respective period of licensure.
- d.* Whether the out-of-state lawyer has been denied admission pro hac vice in this state. If so, specify the caption of the proceedings, the date of the denial, and what findings were made.
- e.* Whether the out-of-state lawyer has had admission pro hac vice revoked in this state. If so, specify the caption of the proceedings, the date of the revocation, and what findings were made.
- f.* Whether the out-of-state lawyer has been denied admission in any jurisdiction for reasons other than failure of a bar examination. If so, specify the jurisdiction, caption of the proceedings, the date of the denial, and what findings were made.
- g.* Whether the out-of-state lawyer has been formally disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings.
- h.* Whether the out-of-state lawyer has been the subject of any injunction, cease-and-desist letter, or other action arising from a finding that the out-of-state lawyer engaged in the unauthorized practice of law in this state or elsewhere. If so, specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings.
- i.* Whether any formal, written disciplinary proceeding has been brought against the out-of-state lawyer by a disciplinary authority or unauthorized practice of law commission in any other jurisdiction within the last five years, and as to each such proceeding: the nature of the allegations, the name of the person or authority bringing such proceedings, the date the proceedings were initiated and finally concluded, the style of the proceedings, and the findings made and actions taken in connection with those proceedings.
- j.* Whether the out-of-state lawyer has been placed on probation by a disciplinary authority in any other jurisdiction. If so, specify the jurisdiction, caption of the proceedings, the terms of the probation, and what findings were made.
- k.* Whether the out-of-state lawyer has been held formally in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so:

the nature of the allegations, the name of the court before which such proceedings were conducted, the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. A copy of the written order or transcript of the oral rulings shall be attached to the application.

l. The name and address of each court or agency and a full identification of each proceeding in which the out-of-state lawyer has filed an application to appear pro hac vice in this state within the preceding two years, the date of each application, and the outcome of the application.

m. An averment as to the out-of-state lawyer's familiarity with the rules of professional conduct, the disciplinary procedures of this state, the standards for professional conduct, the applicable local rules, and the procedures of the court or agency before which the out-of-state lawyer seeks to practice.

n. The name, address, telephone number, and personal identification number of an in-state lawyer in good standing of the bar of this state who will sponsor the out-of-state lawyer's pro hac vice request.

o. An acknowledgement that service upon the in-state lawyer in all matters connected with the proceedings has the same effect as if personally made upon the out-of-state lawyer.

p. If the out-of-state lawyer has appeared pro hac vice in this state in five proceedings within the preceding two years, the application shall contain a statement showing good cause why the out-of-state attorney should be admitted in the present proceeding.

q. Any other information the out-of-state lawyer deems necessary to support the application for admission pro hac vice.

31.14(6) *Objection to application.* A party to the proceeding may file an objection to the application or seek the court's or agency's imposition of conditions to its being granted. The objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The objecting party may seek denial of the application or modification of it. If the application has already been granted, the objecting party may move that the pro hac vice admission be revoked.

31.14(7) *Standard for admission.* The courts and agencies of this state have discretion as to whether to grant applications for admission pro hac vice. If there is no opposition, the court or agency has the discretion to grant or deny the application summarily. An application ordinarily should be granted unless the court or agency finds one of the following:

a. The admission of the out-of-state attorney pro hac vice may be detrimental to the prompt, fair, and efficient administration of justice.

b. The admission of the out-of-state attorney pro hac vice may be detrimental to legitimate interests of parties to the proceedings other than a client the out-of-state lawyer proposes to represent.

c. One or more of the clients the out-of-state lawyer proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk.

d. The out-of-state lawyer has appeared pro hac vice in this state in five proceedings within the preceding two years, unless the out-of-state lawyer can show good cause exists for admission.

31.14(8) *Revocation of admission.* Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in rule 31.14(7).

31.14(9) *Discipline, contempt, and sanction authority over the out-of-state lawyer.*

a. During the pendency of an application for admission pro hac vice and upon the granting of such application, an out-of-state lawyer submits to the authority of the courts of this state, the agencies of this state, and the Iowa Supreme Court Attorney Disciplinary Board for all conduct relating in any way to the proceeding in which the out-of-state lawyer seeks to appear. The out-of-state lawyer submits to these authorities for all of the lawyer's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An out-of-state lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer. *See* Iowa R. Prof'l Conduct 32:8.5.

b. The authority to which an out-of-state lawyer submits includes, but is not limited to, the enforcement of the rules of professional conduct, the rules of procedure of the Iowa Supreme Court Attorney Disciplinary Board, contempt and sanction procedures, applicable local rules, and court, agency, and board policies and procedures.

c. An out-of-state lawyer who appears before a court of this state or before an agency of this state when practice is limited to lawyers and who does not obtain admission pro hac vice is engaged in the unauthorized practice of law. *See* Iowa R. Prof'l Conduct 32:5.5 cmt. 9. If an out-of-state lawyer reasonably expects to be admitted pro hac vice, the lawyer may provide legal services that are in or

reasonably related to a pending or potential proceeding before a court or agency in this state. *See* Iowa R. Prof'l Conduct 32:5.5(c)(2).

31.14(10) Familiarity with rules. An out-of-state lawyer shall become familiar with the rules of professional conduct, the rules of procedure of the Iowa Supreme Court Attorney Disciplinary Board, the standards for professional conduct, local court or agency rules, and the policies and procedures of the court or agency before which the out-of-state lawyer seeks to practice.

[Court Order July 2, 1975; June 22, 1976; December 2, 1993; June 5, 1996, effective July 1, 1996; (Prior to July 1, 1996, Court Rule 116); April 1, 1999; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; September 27, 2006; March 15, 2007; June 3, 2009]

Rule 31.15 Permitted practice by law students.

31.15(1) A law student enrolled in a reputable law school as defined by rule 31.8 and Iowa Code section 602.10102 certified to the office of professional regulation by the dean of the school to have completed satisfactorily not less than the equivalent of three semesters of the work required by the school to qualify for the J.D. or LL.B. degree, may, under the following conditions, engage in the practice of law or appear as counsel in the trial or appellate courts of this state.

a. Appearance by students as defense counsel in a criminal matter in any court shall be confined to misdemeanors and shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

b. Appearance by students in matters before the court of appeals or supreme court of Iowa shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

c. Appearance by students in other matters shall be under the general supervision of licensed Iowa counsel, but such counsel need not be present in court unless required by order of the court.

31.15(2) A student who the dean certifies has completed not less than the equivalent of two semesters of work required to qualify for the J.D. or LL.B. degree may appear in a representative capacity in a contested case proceeding before an administrative agency. Appearance by students who have completed only two semesters of work shall be under the direct supervision of licensed Iowa counsel who shall be personally present.

31.15(3) No student may engage in the practice of law or appear as counsel in any court of this state or before an administrative agency unless such practice or appearance is part of an educational program approved by the faculty of the student's law school and not disapproved by the supreme court of the state of Iowa, and such program is supervised by at least one member of the law school's faculty.

31.15(4) A student shall not receive compensation other than general compensation from an employer-attorney or from a law-school-administered fund.

[Court Order April 4, 1967; May 15, 1972; January 14, 1974; April 8, 1975 [withdrawn]; April 9, 1975; April 8, 1980; April 28, 1987; June 5, 1996, effective July 1, 1996 (Prior to July 1, 1996, Court Rule 120); January 9, 1998, effective February 2, 1998; November 9, 2001, effective February 15, 2002; June 4, 2008, effective July 1, 2008]

Rule 31.16 Registration of house counsel.

31.16(1) Who must register. Any person who is not admitted to practice law in the state of Iowa, but who is admitted to practice law in any other United States jurisdiction, and who maintains an office or a systematic and continuous presence in this state for the practice of law as house counsel for a corporation, association, or other business, educational, or governmental entity engaged in business in Iowa must register and will then be allowed to practice law in this state without examination or admission to the Iowa bar. For purposes of this rule, "United States jurisdiction" includes the District of Columbia and any state, territory, or commonwealth of the United States.

31.16(2) Procedure for registering. A lawyer applying for registration under this rule shall submit an affidavit to the office of professional regulation certifying that:

a. The applicant has been lawfully admitted to practice and is a lawyer in good standing in another United States jurisdiction;

b. The applicant has not been disbarred or suspended from practice in any jurisdiction and has never been convicted of a felony;

c. While serving as counsel, the applicant will perform legal services solely for a corporation, association, or other business, educational, or governmental entity, including its subsidiaries and affiliates;

d. While serving as counsel, the applicant will not provide personal legal services to the employer's officers or employees; and

e. Said corporation, association, or other business, educational, or governmental entity is not engaged in the practice of law or provision of legal services.

31.16(3) Requirements for registration. Prior to being registered to practice in Iowa, the applicant must:

a. Pay a \$200 registration fee to the Client Security Commission;

b. Provide the commission with the applicant's social security number, date of birth, and e-mail address; and

c. Submit the following documents to the office of professional regulation:

(1) Proof of admission in jurisdictions of licensure;

(2) A certificate of good standing from the highest court of each jurisdiction of admission;

(3) A certificate from the disciplinary authority of each jurisdiction of admission stating that the applicant has not been suspended, disbarred, or disciplined and that no charges of professional misconduct are pending; or that identifies any suspensions, disbarments, or other disciplinary sanctions that have been imposed upon the applicant, and any pending charges, complaints, or grievances; and

(4) An affidavit by the corporation, association, or other business, educational, or governmental entity for which the applicant intends to provide services, certifying that:

1. The applicant will be employed by the entity;

2. To the best of its knowledge the applicant has been lawfully admitted to practice and is a lawyer in good standing in another United States jurisdiction;

3. To the best of its knowledge the applicant has not been disbarred or suspended from practice in any jurisdiction and has never been convicted of a felony;

4. While serving as counsel, the applicant will perform legal services solely for the corporation, association, or other business, educational, or governmental entity, including its subsidiaries and affiliates;

5. While serving as counsel, the applicant will not provide personal legal services to the employer's officers or employees;

6. The corporation, association, or other business, educational, or governmental entity is not engaged in the practice of law or provision of legal services; and

7. The entity will promptly notify the Client Security Commission of the termination of the applicant's employment.

(5) Any other document required to be submitted by the supreme court.

31.16(4) Court's discretion to approve registration. The supreme court shall have the discretion to grant or deny an application or to revoke a registration. The court may procure the character investigation services of the National Conference of Bar Examiners, at the applicant's expense, in any matter in which substantial questions regarding the applicant's character or fitness to practice law are implicated. The director of the office of professional regulation shall issue a certificate of registration upon the supreme court's approval of the application.

31.16(5) Discipline in other jurisdictions—notification. A lawyer who is practicing law in Iowa under this registration provision must immediately inform the Iowa Supreme Court Attorney Disciplinary Board in writing of any disciplinary action commenced or any discipline or sanction imposed against the lawyer in any other jurisdiction.

31.16(6) Limitation of activities. Registration under this rule does not authorize a lawyer to provide services to the lawyer's employer for which pro hac vice admission is required. A lawyer registered under this rule must therefore comply with the requirements for pro hac vice admission under rule 31.14 for any appearances before a court or an administrative agency.

31.16(7) Amnesty period. Any lawyer not licensed in this state who is employed as house counsel in Iowa on the effective date of this rule, July 1, 2005, shall not be deemed to have been engaged in the unauthorized practice of law in Iowa prior to registration under this rule if application for registration is made within 12 months of that date.

31.16(8) Practice pending registration. Any lawyer who becomes employed as house counsel in Iowa after the effective date of this rule, July 1, 2005, shall not be deemed to have engaged in the unauthorized practice of law in Iowa prior to registration under this rule if an application for registration is made within 90 days of the commencement of such employment.

31.16(9) *Annual statement and fee.* Any lawyer registered under this rule shall file an annual statement and pay the annual disciplinary fee as required by Iowa Ct. Rs. 39.5 and 39.8.

31.16(10) *Duration of registration—credit toward admission on motion.* A lawyer may practice law in Iowa under this registration provision for a period of up to five years. If the lawyer intends to continue practicing law in Iowa, the lawyer must, prior to the expiration of the five-year period, apply for admission on motion. *See* Iowa Ct. R. 31.12. The period of time the lawyer practices law in Iowa under the registration provisions of this rule may be used to satisfy the duration-of-practice requirement under rule 31.12(3)(a).

31.16(11) *Termination of employment.* When a lawyer ceases to be employed as house counsel with the corporation, association, or other business, educational, or governmental entity submitting the affidavit under rule 31.16(3)(c)(4), the lawyer's authorization to perform legal services under this rule terminates unless the lawyer complies with the requirements of rule 31.16(12). When the registered employment ceases, the employer and the lawyer shall immediately notify the Client Security Commission in writing that the lawyer's employment has ended.

31.16(12) *Change of employers.* If, within 90 days of ceasing to be employed by the employer submitting the affidavit under rule 31.16(3)(c)(4), a lawyer becomes employed by another employer and such employment meets all requirements of this rule, the lawyer's registration shall remain in effect, if within said 90-day period there is filed with the Client Security Commission:

a. Written notification by the lawyer indicating the date on which the prior employment terminated, the date on which the new employment commenced, and the name of the new employer;

b. Certification by the former employer that the termination of the employment was not based upon the lawyer's character or fitness or the lawyer's failure to comply with this rule; and

c. The affidavit specified in rule 31.16(3)(c)(4), duly executed by the new employer.

31.16(13) *Discipline.* A lawyer registered under this rule shall be subject to the disciplinary authority of this jurisdiction to the same extent as lawyers licensed to practice law in this state.

31.16(14) *Denial of application or suspension of registration for failure to comply with an obligation owed to or collected by the centralized collection unit of the department of revenue.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with an obligation owed to or collected by the centralized collection unit of the department of revenue. The procedure shall be governed by rule 31.9(4).

31.16(15) *Denial of application or suspension of registration for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 31.9(3).

31.16(16) *Denial of application or suspension of registration for failure to comply with a support order.* The supreme court may deny a lawyer's application for registration or suspend a lawyer's registration under this rule for failure to comply with a support order. The procedure shall be governed by rule 31.9(2).

[Court Orders April 20, 2005, and July 1, 2005, effective July 1, 2005; September 1, 2005; June 16, 2006; February 14, 2008, effective April 1, 2008; June 5, 2008, effective July 1, 2008]

Rule 31.17 Provision of legal services following determination of major disaster.

31.17(1) *Determination of existence of major disaster.* Solely for purposes of this rule, this court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

a. This state and whether the emergency caused by the major disaster affects the entirety or only a part of the state, or

b. Another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this state pursuant to rule 31.17(3) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

31.17(2) *Temporary practice—pro bono services.* Following the determination of an emergency affecting the justice system in this state pursuant to rule 31.17(1), or a determination that persons displaced by a major disaster in another jurisdiction and residing in this state are in need of pro bono services and the assistance of lawyers from outside of this state is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred,

suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this state on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this court.

31.17(3) *Temporary practice—legal services arising out of and reasonably related to a lawyer’s practice of law in another jurisdiction, or area of such other jurisdiction, where the disaster occurred.* Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this state on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer’s practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

31.17(4) *Duration of authority for temporary practice.* The authority to practice law in this state granted by rule 31.17(2) shall end when this court determines that the conditions caused by the major disaster have ended except that a lawyer then representing clients in this state pursuant to rule 31.17(2) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this state granted by rule 31.17(3) shall end 60 days after this court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

31.17(5) *Court appearances.* The authority granted by this rule does not include appearances in court except:

- a. Pursuant to this court’s pro hac vice admission rule; or
- b. If this court, in any determination made under rule 31.17(1), grants blanket permission to appear in all or designated courts of this state to lawyers providing legal services pursuant to rule 31.17(2).

31.17(6) *Disciplinary authority and registration requirement.* Lawyers providing legal services in this state pursuant to rule 31.17(2) or (3) are subject to this court’s disciplinary authority and the Iowa Rules of Professional Conduct as provided in Iowa R. of Prof’l Conduct 8.5. Lawyers providing legal services in this state under rule 31.17(2) or (3) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the office of professional regulation. A form for the registration statement can be found in rule 31.25. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this state.

31.17(7) *Notification to clients.* Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule shall inform clients in this state of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this state except as permitted by this rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this state.

The comment accompanying this rule explains and illustrates the meaning and purpose of the rule. The comment is intended as a guide to interpretation, but the text of the rule is authoritative.

COMMENT

[1] A major disaster in this state or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under rule 31.17(1)(a), this court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this state, or in a part of this state, for purposes of triggering rule 31.17(2). This court may, for example, determine that the entirety of this state has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by rule 31.17(2) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Rule 31.17(2) permits lawyers authorized to practice law in another jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of this state following a determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in this state. Other restrictions on a lawyer’s license to practice law that would prohibit that lawyer from providing legal services pursuant to this rule include, but are not limited to, probation, inactive status,

disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being “in good standing,” and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this rule. Lawyers permitted to provide legal services pursuant to this rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under rule 31.17(2), an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in this state provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction’s emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this state on a temporary basis under Iowa R. of Prof’l Conduct 32:5.5(c).

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under rule 31.17(3) to provide legal services on a temporary basis in this state. Those legal services must arise out of and be reasonably related to the lawyer’s practice of law in the affected jurisdiction. For purposes of this rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of “arise out of and reasonably related to,” see Iowa R. of Prof’l Conduct 32:5.5, cmt. [14].

[5] Emergency conditions created by major disasters end, and when they do, the authority created by rules 31.17(2) and (3) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under rule 31.17(4), this court determines when those conditions end only for purposes of this rule. The authority granted under rule 31.17(2) shall end upon such determination except that lawyers assisting residents of this state under rule 31.17(2) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by rule 31.17(3) will end 60 days after this court makes such a determination with regard to an affected jurisdiction.

[6] Rules 31.17(2) and (3) do not authorize lawyers to appear in the courts of this state. Court appearances are subject to the pro hac vice admission rules of this court. This court may, in a determination made under rule 31.17(5)(b), include authorization for lawyers who provide legal services in this state under rule 31.17(2) to appear in all or designated courts of this state without need for such pro hac vice admission. A lawyer who has appeared in the courts of this state pursuant to rule 31.17(5) may continue to appear in any such matter notwithstanding a declaration under rule 31.17(4) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Iowa R. of Prof’l Conduct 32:1.16.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person’s ability to provide legal services under this rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this state pursuant to rule 31.17(2) or (3) is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer’s ability to practice law in any other jurisdiction.

[Court Order May 14, 2007; February 14, 2008, effective April 1, 2008]

Rule 31.18 Licensing and practice of foreign legal consultants.

31.18(1) *General regulation as to licensing.* In its discretion, the supreme court may license to practice in the State of Iowa as a foreign legal consultant, without examination, an applicant who:

a. Is, and for at least five years has been, a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

b. For at least five years preceding his or her application has been a member in good standing of such legal profession and has been lawfully engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;

c. Possesses the good moral character and general fitness requisite for a member of the bar of this state; and

d. Intends to practice as a foreign legal consultant in this state and to maintain an office in this state for that purpose.

31.18(2) *Application and fee.*

a. The applicant shall file an application for a foreign legal consultant license with the National Conference of Bar Examiners through their online character and fitness application process at <http://www.ncbex.org/ea>, unless an exception is granted by the Office of Professional Regulation. The applicant shall pay an investigative fee of \$600 to the National Conference of Bar Examiners at the time of filing the application.

b. In addition, the applicant shall file the following documents and fee with the Office of Professional Regulation:

(1) A certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the

applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent, and certifying that the applicant has not been disciplined and no charges of professional misconduct are pending, or identifying any disciplinary sanctions that have been imposed upon the applicant or any pending charges, complaints, or grievances;

(2) A letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction in the foreign country in which the applicant is admitted;

(3) Duly authenticated English translations of the certificate required by rule 31.18(2)(b)(1) and the letter required by rule 31.18(2)(b)(2) if they are not in English;

(4) The requisite documentation establishing the applicant's compliance with the immigration laws of the United States;

(5) Other evidence as the supreme court may require regarding the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of rule 31.18(1); and

(6) An administrative fee of \$400 payable to the Office of Professional Regulation at the time the application is filed.

31.18(3) *Scope of practice.* A person licensed to practice as a foreign legal consultant under this rule may render legal services in this state, but shall not be considered admitted to practice law here, or in any way hold himself or herself out as a member of the bar of this state, or do any of the following:

a. Appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this state (except when admitted *pro hac vice* pursuant to Iowa Ct. R. 31.14);

b. Prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

c. Prepare:

(1) Any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or

(2) Any instrument relating to the administration of a decedent's estate in the United States of America;

d. Prepare any instrument in respect of the marital or parental relations, rights, or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

e. Render professional legal advice on the law of this state or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise);

f. Carry on a practice under, or utilize in connection with such practice, any name, title, or designation other than one or more of the following:

(1) The foreign legal consultant's own name;

(2) The name of the law firm with which the foreign legal consultant is affiliated;

(3) The foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and

(4) The title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]."

31.18(4) *Rights and obligations.* Subject to the limitations listed in rule 31.18(3), a person licensed under this rule shall be considered a foreign legal consultant affiliated with the bar of this state and shall be entitled and subject to:

a. The rights and obligations set forth in the Iowa Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of this state under the Iowa Court Rules; and

b. The rights and obligations of a member of the bar of this state with respect to:

(1) Affiliation in the same law firm with one or more members of the bar of this state, including by:

1. Employing one or more members of the bar of this state;

2. Being employed by one or more members of the bar of this state or by any partnership [or professional corporation] that includes members of the bar of this state or that maintains an office in this state; and

3. Being a partner in any partnership [or shareholder in any professional corporation] that includes members of the bar of this state or that maintains an office in this state; and

(2) Attorney-client privilege, work-product privilege, and similar professional privileges.

31.18(5) *Discipline.* A person licensed to practice as a foreign legal consultant under this rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this state. To this end:

a. Every person licensed to practice as a foreign legal consultant under this rule:

(1) Shall be subject to the jurisdiction of the supreme court and the Iowa Supreme Court Attorney Disciplinary Board and to reprimand, suspension, removal, or revocation of his or her license to practice by the supreme court and shall otherwise be governed by the Iowa Rules of Professional Conduct and the Iowa Court Rules; and

(2) Shall execute and file with the clerk of the supreme court, in the form and manner as the court may prescribe:

1. A commitment to observe the Iowa Rules of Professional Conduct and the Iowa Court Rules to the extent applicable to the legal services authorized under rule 31.18(3);

2. A written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession referred to in rule 31.18(1)(a) and of any final action of the professional body or public authority referred to in rule 31.18(2)(b)(1) imposing any disciplinary reprimand, suspension, or other sanction upon the foreign legal consultant; and

3. A duly acknowledged instrument in writing, providing the foreign legal consultant's address in this state and designating the clerk of the supreme court as his or her agent for service of process. The foreign legal consultant shall keep the Office of Professional Regulation advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within this state or to residents of this state, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

b. Service of process on the clerk under rule 31.18(5)(a)(2)“3” shall be made by personally delivering to the clerk's office, and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided in accordance with rule 31.18(5)(a)(2)“3.”

31.18(6) *Required fees and annual statements.* A person licensed as a foreign legal consultant shall pay a \$200 registration fee to the Client Security Commission. The person licensed under this rule shall file an annual statement and pay the annual disciplinary fee as required by Iowa Ct. Rs. 39.5 and 39.8.

31.18(7) *Revocation of license.* If the supreme court determines that a person licensed as a foreign legal consultant under this rule no longer meets the requirements for licensure set forth in rule 31.18(1)(a) or (b), it shall revoke the foreign legal consultant's license.

31.18(8) *Admission to bar.* If a person licensed as a foreign legal consultant under this rule is subsequently admitted as a member of the bar of this state under the rules governing admission, that person's foreign legal consultant license shall be deemed superseded by the license to practice law as a member of the bar of this state.

[Court Order June 3, 2009; January 19, 2010]

Rules 31.19 to 31.24 Reserved.

Rule 31.25 Forms.

Rule 31.25 — Form 1: *Application for Admission Pro Hac Vice — District Court.*

IN THE IOWA DISTRICT COURT OF _____ COUNTY

_____, Plaintiff(s), vs. _____, Defendant(s).	Case No. _____ APPLICATION FOR ADMISSION PRO HAC VICE (Iowa Court Rule 31.14)
---	--

The undersigned seeks permission to appear pro hac vice in the above-captioned proceeding.

Applicant shall complete all of the following:

If this matter involves review of an agency action did the applicant seek admission pro hac vice in the proceedings below?

Yes No

If yes, attach copies of all related documents.

a. Applicant's full name, residential address, and business address.

b. The name, address, and phone number of each client sought to be represented.

c. The courts before which the applicant has been admitted to practice and the respective periods of admission and any jurisdiction in which the out-of-state lawyer has been licensed to practice as a foreign legal consultant and the respective period of licensure.

d. Has the applicant ever been denied admission pro hac vice in this state?

Yes No

If yes, on a separate page specify the caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

e. Has the applicant ever had admission pro hac vice revoked in this state?

Yes No

If yes, on a separate page specify the caption of the proceedings, the date of the revocation, and what findings were made. Attach copies of all related documents.

f. Has the applicant ever been denied admission in any jurisdiction for reasons other than failure of a bar examination?

Yes No

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

g. Has the applicant ever been formally disciplined or sanctioned by any court in this state?

Yes No

If yes, on a separate page specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

h. Has the applicant ever been the subject of any injunction, cease-and-desist letter, or other action arising from a finding that the applicant engaged in the unauthorized practice of law in this state or elsewhere?
Yes No

If yes, on a separate page specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

i. Has any formal, written disciplinary proceeding ever been brought against the applicant by a disciplinary authority or unauthorized practice of law commission in any other jurisdiction within the last five years?
Yes No

If yes, on a separate page specify as to each such proceeding: the nature of the allegations, the name of the person or authority bringing such proceedings, the date the proceedings were initiated and finally concluded, the style of the proceedings, and the findings made and actions taken in connection with those proceedings. Attach copies of all related documents.

j. Has the applicant ever been placed on probation by a disciplinary authority in any other jurisdiction?
Yes No

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the terms of the probation, and what findings were made. Attach copies of all related documents.

k. Has the applicant ever been held formally in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders?
Yes No

If yes, on a separate page specify the nature of the allegations, the name of the court before which such proceedings were conducted, the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. Attach to this application a copy of the written order or a transcript of the oral rulings and other related documents.

l. Has the applicant filed an application to appear pro hac vice in this state within the preceding two years?
Yes No

If yes, on a separate page list the name and address of each court or agency and a full identification of each proceeding in which an application was filed, including the date and outcome of the application. Attach copies of all related documents.

m. I acknowledge my familiarity with the rules of professional conduct, the disciplinary procedures of this state, the standards for professional conduct, the applicable local rules, and the procedures of the court before which I seek to practice.
Yes No

n. List the name, address, telephone number, and personal identification number of an in-state lawyer in good standing of the bar of this state who will sponsor the applicant's pro hac vice request.

o. I acknowledge that service upon the in-state lawyer in all matters connected with the proceedings will have the same effect as if personally made upon me.
Yes No

p. If the applicant has appeared pro hac vice in this state in five proceedings within the preceding two years, the applicant shall, on a separate page, provide a statement showing good cause why the applicant should be admitted in the present proceeding.

q. On a separate page the applicant shall provide any other information the applicant deems necessary to support the application for admission pro hac vice.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Date

Signature of applicant

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the _____ day of _____ 20 ____ by _____ personal delivery _____ deposit in the U.S. mail.

Signature of person making service

Rule 31.25 — Form 2: Application for Admission Pro Hac Vice — Supreme Court.

IN THE IOWA SUPREME COURT

_____, Plaintiff(s), vs. _____, Defendant(s).	Case No. _____ APPLICATION FOR ADMISSION PRO HAC VICE (Iowa Court Rule 31.14)
---	--

The undersigned seeks permission to appear pro hac vice in the above-captioned proceeding.

Applicant shall complete all of the following:

Did the applicant seek admission pro hac vice in the proceedings below?

Yes No

If yes, attach copies of all related documents.

a. Applicant's full name, residential address, and business address.

b. The name, address, and phone number of each client sought to be represented.

c. The courts before which the applicant has been admitted to practice and the respective periods of admission and any jurisdiction in which the out-of-state lawyer has been licensed to practice as a foreign legal consultant and the respective period of licensure.

d. Has the applicant ever been denied admission pro hac vice in this state?

Yes No

If yes, on a separate page specify the caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

e. Has the applicant ever had admission pro hac vice revoked in this state?

Yes No

If yes, on a separate page specify the caption of the proceedings, the date of the revocation, and what findings were made. Attach copies of all related documents.

f. Has the applicant ever been denied admission in any jurisdiction for reasons other than failure of a bar examination?

Yes No

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

g. Has the applicant ever been formally disciplined or sanctioned by any court in this state?

Yes No

If yes, on a separate page specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

h. Has the applicant ever been the subject of any injunction, cease-and-desist letter, or other action arising from a finding that the applicant engaged in the unauthorized practice of law in this state or elsewhere?
Yes No

If yes, on a separate page specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

i. Has any formal, written disciplinary proceeding ever been brought against the applicant by a disciplinary authority or unauthorized practice of law commission in any other jurisdiction within the last five years?
Yes No

If yes, on a separate page specify as to each such proceeding: the nature of the allegations, the name of the person or authority bringing such proceedings, the date the proceedings were initiated and finally concluded, the style of the proceedings, and the findings made and actions taken in connection with those proceedings. Attach copies of all related documents.

j. Has the applicant ever been placed on probation by a disciplinary authority in any other jurisdiction?
Yes No

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the terms of the probation, and what findings were made. Attach copies of all related documents.

k. Has the applicant ever been held formally in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders?
Yes No

If yes, on a separate page specify the nature of the allegations, the name of the court before which such proceedings were conducted, the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. Attach to this application a copy of the written order or a transcript of the oral rulings and other related documents.

l. Has the applicant filed an application to appear pro hac vice in this state within the preceding two years?
Yes No

If yes, on a separate page list the name and address of each court or agency and a full identification of each proceeding in which an application was filed, including the date and outcome of the application. Attach copies of all related documents.

m. I acknowledge my familiarity with the rules of professional conduct, the disciplinary procedures of this state, the standards for professional conduct, the applicable local rules, and the procedures of the court before which I seek to practice.
Yes No

n. List the name, address, telephone number, and personal identification number of an in-state lawyer in good standing of the bar of this state who will sponsor the applicant's pro hac vice request.

o. I acknowledge that service upon the in-state lawyer in all matters connected with the proceedings will have the same effect as if personally made upon me.
Yes No

p. If the applicant has appeared pro hac vice in this state in five proceedings within the preceding two years, the applicant shall, on a separate page, provide a statement showing good cause why the applicant should be admitted in the present proceeding.

q. On a separate page the applicant shall provide any other information the applicant deems necessary to support the application for admission pro hac vice.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Date

Signature of applicant

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the following parties (list names and addresses below) on the _____ day of _____ 20____ by _____ personal delivery
_____ deposit in the U.S. mail.

Signature of person making service

Rule 31.25 — Form 3: *Registration statement for lawyer engaging in temporary practice following determination of major disaster.*

IN THE IOWA SUPREME COURT

**REGISTRATION STATEMENT FOR LAWYER
ENGAGING IN TEMPORARY PRACTICE
FOLLOWING DETERMINATION OF MAJOR
DISASTER**

IOWA COURT RULE 31.17

Pursuant to Iowa Court Rule 31.17(6) the undersigned shall complete the following:

1. Name

Lawyer's full name.

Name of lawyer's firm.

2. Home State Information

Residential address in lawyer's home state.

Business address in lawyer's home state.

Telephone number(s) in lawyer's home state.

E-mail address.

3. Iowa Information

Residential address in Iowa.

Business address in Iowa.

Telephone number(s) in Iowa.

E-mail address.

4. Bar Admission

List the courts before which you have been admitted to practice, the respective periods of admission, and your registration or bar numbers.

Is your license to practice currently subject to disbarment, suspension, or restrictions in any jurisdiction?

Yes No

If yes, on a separate page specify the proceedings and attach copies of all related documents.

5. Temporary Practice Following Determination of Major Disaster

(Check all that apply)

Specify whether you will engage in temporary practice pursuant to:

- Iowa Court Rule 31.17(2) (pro bono legal services).
- Iowa Court Rule 31.17(3) (legal services reasonably related to lawyer’s practice of law in the other jurisdiction, or area of such other jurisdiction, where the disaster occurred).

I agree that I am subject to the disciplinary procedures and authority of this court and the Iowa Rules of Professional Conduct, the Standards for Professional Conduct, and any applicable local rules and procedures.

Yes No

ATTORNEY CERTIFICATION

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that I am licensed and in good standing and authorized to practice law in each jurisdiction listed above and my license is not subject to suspension or restriction in any jurisdiction.

Date

Signature of Lawyer

[Court Order May 14, 2007]

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT

PREAMBLE AND SCOPE

Rule 32:1.0 TERMINOLOGY

CLIENT-LAWYER RELATIONSHIP

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 Rule 32:1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF
 AUTHORITY BETWEEN CLIENT AND LAWYER
 Rule 32:1.3 DILIGENCE
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LAW FIRMS AND ASSOCIATIONS

Rule 32:5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND
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Rule 32:5.3	RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS
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MAINTAINING THE INTEGRITY OF THE PROFESSION

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CHAPTER 32

IOWA RULES OF PROFESSIONAL CONDUCT

PREAMBLE AND SCOPE

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, rules 32:1.12 and 32:2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *See* rule 32:8.4.

[4] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Iowa Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Iowa Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest

because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Iowa Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Iowa Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Iowa Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Iowa Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the comments use the term "should." Comments do not add obligations to the rules but provide guidance for practicing in compliance with the rules.

[15] The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. The comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under rule 32:1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. *See* rule 32:1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

[20] Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of breach of the applicable standard of conduct.

[21] The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The Preamble and this note on Scope provide general orientation. The comments are intended as guides to interpretation, but the text of each rule is authoritative.

Rule 32:1.0: TERMINOLOGY

(a) "*Belief*" or "*believes*" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "*Confirmed in writing,*" when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. *See* paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "*Firm*" or "*law firm*" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "*Fraud*" or "*fraudulent*" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "*Informed consent*" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and

reasonably available alternatives to the proposed course of conduct.

(f) “*Knowingly*,” “*known*,” or “*knows*” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(g) “*Partner*” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) “*Reasonable*” or “*reasonably*” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) “*Reasonable belief*” or “*reasonably believes*” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “*Reasonably should know*” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) “*Screened*” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

(l) “*Substantial*” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) “*Tribunal*” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

(n) “*Writing*” or “*written*” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client’s informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Iowa Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

[5] When used in these rules, the terms “fraud” or “fraudulent” refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Iowa Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. *See, e.g.*, rules 32:1.2(c), 32:1.6(a), 32:1.7(b), 32:1.9(a), 32:1.11(a), 32:1.12(a), and 32:1.18(d). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client’s or other person’s silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person’s consent be confirmed in writing. *See* rules 32:1.7(b), 32:1.9(a), 32:1.11(a), 32:1.12(a), and 32:1.18(d). For a definition of “writing” and “confirmed in writing,” see paragraphs (n) and (b). Other rules require that a client’s consent be obtained in a writing signed by the client. *See, e.g.*, rules 32:1.8(a) and (g). For a definition of “signed,” see paragraph (n).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under rule 32:1.11, 32:1.12, or 32:1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with

other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

[Court Order April 20, 2005, effective July 1, 2005]

CLIENT-LAWYER RELATIONSHIP

Rule 32:1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See also* rule 32:6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* rule 32:1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 32:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit or court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in a writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in any matters other than those identified in the writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Comment*Allocation of Authority between Client and Lawyer*

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See rule 32:1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by rule 32:1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal, and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe how such disagreements are to be resolved. Other law, however, may be

applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. *See* rule 32:1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. *See* rule 32:1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 32:1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to rule 32:1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. *See* rule 32:1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Iowa Rules of Professional Conduct and other law. *See, e.g.,* rules 32:1.1, 32:1.8, and 32:5.6.

Criminal, Fraudulent, and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. *See* rule 32:1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the

lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. *See* rule 32:4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. *See* rule 32:1.4(a)(5).

[Court Order April 20, 2005, effective July 1, 2005; March 12, 2007]

Rule 32:1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* rule 32:1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. *See* Iowa Ct. R. ch. 33.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in rule 32:1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* rule 32:1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client or other applicable law. *See* rule 32:1.2. *See, e.g.,* Iowa R. Crim. P. 2.29(6); Iowa Rs. App. P. 6.102(1)(b) and 6.201, 6.109(4) and 6.109(5).

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *See* Iowa

Ct. R. 35.17(6) and 35.18 (where reasonable necessity exists, the local chief judge shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

[Court Order April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 32:1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 32:1.0(e), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Iowa Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* rule 32:1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. The lawyer should also discuss relevant provisions of the Standards for Professional Conduct and indicate the lawyer's intent to follow those Standards whenever possible. *See* Iowa Ct. R. ch. 33. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part

on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in rule 32:1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* rule 32:1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* rule 32:1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 32:3.4(c) directs compliance with such rules or orders.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses, or violate any restrictions imposed by law. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for

which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Comment

Reasonableness and Legality of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer. A fee that is otherwise reasonable may be subject to legal limitations, of which the lawyer should be aware. For example, a lawyer must comply with restrictions imposed by statute or court rule on the timing and amount of fees in probate.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate, or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. *See* rule 32:1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 32:1.8(i). However, a fee paid in property instead of money may be subject to the requirements of rule 32:1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. *See* rule 32:1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;**
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;**
- (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of**

another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent imminent death or substantial bodily harm.

Comment

[1] This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 32:1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 32:1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 32:1.8(b) and 32:1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See rule 32:1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Iowa Rules of Professional Conduct or other law. *See also* Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Permissive Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered in the near future or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in rule 32:1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. *See* rule 32:1.2(d). *See* also rule 32:1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and rule 32:1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified, or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Iowa Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary, or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes rule 32:1.6 is a question of law beyond the scope of these rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must

discuss the matter with the client to the extent required by rule 32:1.4. If, however, the other law supersedes this rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

[13] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by rule 32:1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[15] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this rule. Disclosure may be required, however, by other rules. Some rules require disclosure only if such disclosure would be permitted by paragraph (b). *See* rules 32:1.2(d), 32:4.1(b), 32:8.1, and 32:8.3. Rule 32:3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this rule. *See* rule 32:3.3(c).

Acting Competently to Preserve Confidentiality

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. *See* rules 32:1.1, 32:5.1, and 32:5.3.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

Former Client

[18] The duty of confidentiality continues after the client-lawyer relationship has terminated. *See* rule 32:1.9(c)(2). *See* rule 32:1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Required Disclosure Adverse to Client

[19] Rule 32:1.6(c) requires a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent imminent death or substantial

bodily harm. Rule 32:1.6(c) differs from rule 32:1.6(b)(1) in that rule 32:1.6(b)(1) permits, but does not require, disclosure in situations where death or substantial bodily harm is deemed to be reasonably certain rather than imminent. For purposes of rule 32:1.6, “reasonably certain” includes situations where the lawyer knows or reasonably believes the harm will occur, but there is still time for independent discovery and prevention of the harm without the lawyer’s disclosure. For purposes of this rule, death or substantial bodily harm is “imminent” if the lawyer knows or reasonably believes it is unlikely that the death or harm can be prevented unless the lawyer immediately discloses the information.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) In no event shall a lawyer represent both parties in dissolution of marriage proceedings.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client, a former client or a third person, or from the lawyer’s own interests. For specific rules regarding certain concurrent conflicts of interest, see rule 32:1.8. For former client conflicts of interest, see rule 32:1.9. For conflicts of interest involving prospective clients, see rule 32:1.18. For definitions of “informed consent” and “confirmed in writing,” see rule 32:1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. *See also* comment to rule 32:5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer’s violation of this rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 32:1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). *See* rule 32:1.16. Where more than one client is involved,

whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. *See* rule 32:1.9. *See also* comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. *See* rule 32:1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. *See* rule 32:1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under rule 32:1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor, or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See rule 32:1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions with clients. *See also* rule 32:1.10 (personal interest conflicts under rule 32:1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., a parent, child, sibling, spouse, cohabiting partner, or lawyer related in any other familial or romantic capacity, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. *See* rule 32:1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. *See* rule 32:1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. *See* rule 32:1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

[13a] Where a lawyer has been retained by an insurer to represent the insured pursuant to the insurer's obligations under a liability insurance policy, the lawyer may comply with reasonable cost-containment litigation guidelines proposed by the insurer if such guidelines do not materially interfere with the lawyer's duty to exercise independent professional judgment to protect the reasonable interests of the insured, do not regulate the details of the lawyer's performance, and do not materially limit the professional discretion and control of the lawyer. The lawyer may provide the insurer with a description of the services rendered and time spent, but the lawyer may not agree to provide detailed information that would undermine the protection of confidential client-lawyer information, if the insurer will share such information with a third party. If the lawyer believes that guidelines proposed by the insurer prevent the lawyer from exercising independent professional judgment or from protecting confidential client information, the lawyer shall identify and explain the conflict of interest to the insurer and insured and also advise the insured of the right to seek independent legal counsel. If the conflict is not eliminated but the insured wants the lawyer to continue the representation, the lawyer may proceed if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation and the insured's informed consent is obtained pursuant to paragraph (b)(4).

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as

indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. *See* rule 32:1.1 (competence) and rule 32:1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Paragraph (c) provides a specific example of such a nonconsentable conflict, that is, where a lawyer is asked to represent both parties in a marriage dissolution proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under rule 32:1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. *See* rule 32:1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality, and the attorney-client privilege and the advantages and risks involved. *See* comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. *See* rule 32:1.0(b). *See also* rule 32:1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. *See* rule 32:1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients, and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraphs (b)(3) and (c) prohibit representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved, and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need

the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise, and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. *See* comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest, or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication, or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment, and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. *See* rule 32:1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate

for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. *See* rule 32:1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of rule 32:1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in rule 32:1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. *See* rule 32:1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to

the client. For purposes of this paragraph, related persons include a spouse, child, sibling, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by rule 32:1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client, or a representative of a client, unless the person is the spouse of the lawyer or the sexual relationship predates the initiation of the client-lawyer relationship. Even in these provisionally exempt relationships, the lawyer should strictly scrutinize the lawyer's behavior for any conflicts of interest to determine if any harm may result to the client or to the representation. If there is any reasonable possibility that the legal representation of the client may be impaired, or the client harmed by the continuation of the sexual relationship, the lawyer should immediately withdraw from the legal representation.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

(l) A lawyer related to another lawyer shall not represent a client whose interests are directly adverse to a person whom the lawyer knows is represented by the related lawyer except upon the client's informed consent, confirmed in a writing signed by the client. Even if the client's interests do not appear to be directly adverse, the lawyer should not undertake the representation of a client if there is a significant risk that the related lawyer's involvement will interfere with the lawyer's loyalty and exercise of independent judgment, or will create a significant risk that client confidences will be revealed. For purposes of this paragraph, "related lawyer" includes a parent, child, sibling, spouse, cohabiting partner, or lawyer related in any other familial or romantic capacity.

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence

between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of investment services to existing clients of the lawyer's legal practice. *See* rule 32:5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 32:1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. *See* rule 32:1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of rule 32:1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that rule 32:1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these rules. *See* rules 32:1.2(d), 32:1.6, 32:1.9(c), 32:3.3, 32:4.1(b), 32:8.1, and 32:8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this rule is where the client is a relative of the donee.

[8] This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 32:1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to rule 32:1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company), or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. *See also* rule 32:5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs, or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with rule 32:1.7. The lawyer must also conform to the requirements of rule 32:1.6 concerning confidentiality. Under rule 32:1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under rule 32:1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under rule 32:1.7(b), the informed consent must be confirmed in writing.

[12a] When the lawyer is publicly-compensated, such as in the case of a public defender in a criminal case or a guardian appointed in a civil case or when civil legal services are provided by a legal aid organization, the fee arrangement ordinarily does not pose the same risk of interference with the lawyer's independent professional judgment that exists in other contexts. Under paragraph (f), such a lawyer must disclose the fact that the lawyer is being compensated through public funding or that legal services are being provided as part of a legal aid organization; however, formal consent by the client to the fee arrangement is not required under such circumstances given the limited ability of an indigent client as a practical matter to refuse the services of the lawyer being compensated through public funding or through legal aid.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under rule 32:1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, rule 32:1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. *See also* rule 32:1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with rule 32:1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The rule is subject to specific exceptions developed in decisional law and continued in these rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. Iowa law determines which liens are authorized. These may include liens granted by statute and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by rule 32:1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. *See* rule 32:1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibitions set forth in paragraphs (j) and (l) are personal and are not applied to associated lawyers.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent

another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person, and

(2) about whom the lawyer had acquired information protected by rules 32:1.6 and 32:1.9(c) that is material to the matter, unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this rule. Under this rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. *See* comment [9]. Current and former government lawyers must comply with this rule to the extent required by rule 32:1.11.

[2] The scope of a "matter" for purposes of this rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required

to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by rules 32:1.6 and 32:1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See rule 32:1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 32:1.6 and 32:1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See rule 32:1.0(e). With regard to the effectiveness of an advance waiver, see comment [22] to rule 32:1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see rule 32:1.10.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rule 32:1.7 or 32:1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited

from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by rules 32:1.6 and 32:1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 32:1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 32:1.11.

Comment

Definition of "Firm"

[1] For purposes of the Iowa Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. *See* rule 32:1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. *See* rule 32:1.0, comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by rules 32:1.9(b) and 32:1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. In addition, written notice must be promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule. *See* rules 32:1.0(k) and 32:5.3.

[5] Rule 32:1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate rule 32:1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by rules 32:1.6 and 32:1.9(c).

[6] Rule 32:1.10(c) removes imputation with the informed consent of the affected client or former

client under the conditions stated in rule 32:1.7. The conditions stated in rule 32:1.7 require the lawyer to determine that the representation is not prohibited by rule 32:1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see rule 32:1.7, comment [22]. For a definition of informed consent, see rule 32:1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by rule 32:1.11(b) and (c), not this rule. Under rule 32:1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment, or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under rule 32:1.8, paragraph (k) of that rule, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to rule 32:1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to rules 32:1.7 and 32:1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private employment as permitted by rule 32:1.12(b) and subject to the conditions stated in rule 32:1.12(b).

(e) As used in this rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular

matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(f) Prosecutors for the state or county shall not engage in the defense of an accused in any criminal matter during the time they are engaged in such public responsibilities. However, this paragraph does not apply to a lawyer not regularly employed as a prosecutor for the state or county who serves as a special prosecutor for a specific criminal case, provided that the employment does not create a conflict of interest or the lawyer complies with the requirements of rule 32:1.7(b).

Comment

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Iowa Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in rule 32:1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule. See rule 32:1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 32:1.10 is not applicable to the conflicts of interest addressed by this rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), rule 32:1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest

purposes is beyond the scope of these rules. *See* rule 32:1.13 comment [9].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. *See* rule 32:1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 32:1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the law clerk is participating personally and substantially, but only after the law clerk has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

[1] This rule generally parallels rule 32:1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 32:1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers, and also lawyers who serve as part-time judges. Application section III(B) of the Iowa Code of Judicial Conduct provides that a magistrate or other continuing part-time judge "shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto." Although phrased differently from this rule, that rule corresponds in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators, or other third-party

neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. *See* rule 32:1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. *See* rule 32:2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 32:1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in rule 32:1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[Court Order April 20, 2005, effective July 1, 2005; April 30, 2010, effective May 3, 2010]

Rule 32:1.13: ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not rule 32:1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to ensure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 32:1.7. If the organization's consent to the dual representation is required by rule 32:1.7, the

consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this comment apply equally to unincorporated associations. “Other constituents” as used in this comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization’s lawyer in that person’s organizational capacity, the communication is protected by rule 32:1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client’s employees or other constituents are covered by rule 32:1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by rule 32:1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in rule 32:1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent’s innocent misunderstanding of law and subsequent acceptance of the lawyer’s advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer’s advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by rule 32:1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization’s highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this rule are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the lawyer's responsibility under rule 32:1.8, 32:1.16, 32:3.3, or 32:4.1. Paragraph (c) of this rule supplements rule 32:1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of rule 32:1.6(b)(1) - (6). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, rules 32:1.6(b)(2) and 32:1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances rule 32:1.2(d) may also be applicable, in which event, withdrawal from the representation under rule 32:1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee, or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these rules. *See Scope* [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and ensuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This rule does not limit that authority. *See Scope*.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to ensure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, rule 32:1.7 governs who should represent the directors and the organization.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by rule 32:1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under rule 32:1.6 to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See* rule 32:1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial, or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator, or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by rule 32:1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) All client trust accounts shall be governed by chapter 45 of the Iowa Court Rules.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. *See*, Iowa Ct. R. ch 45.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that

account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party; but when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Such a fund has been established in Iowa, and lawyer participation is mandatory to the extent required by chapter 39 of the Iowa Court Rules.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Iowa Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* rules 32:1.2(c) and 32:6.5. *See also* rule 32:1.3, comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Iowa Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also* rule 32:6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under rules 32:1.6 and 32:3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in rule 32:1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if the withdrawal can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee to the extent permitted by Iowa Code section 602.10116 or other law. *See* rule 32:1.15.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. *See* rules 32:5.4 and 32:5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] This rule contemplates that a lawyer who sells an entire practice may continue in the practice of law in Iowa provided that the lawyer practices in another geographic area of the state.

[5] This rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by rule 32:1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a geographical area typically would sell the entire practice, this rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent, and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of rule 32:1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 32:1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see rule 32:1.7 regarding conflicts and rule 32:1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see rules 32:1.6 and 32:1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see rule 32:1.16).

Applicability of the Rule

[13] This rule applies to the sale of a law practice of a deceased, disabled, or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the

requirements of this rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

[15] This rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:1.18: DUTIES TO A PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as rule 32:1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by rule 32:1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for nonrepresentation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under rule 32:1.7, then consent from all affected present or former clients

must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See rule 32:1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this rule is imputed to other lawyers as provided in rule 32:1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See rule 32:1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted and of the screening procedures employed, should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see rule 32:1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see rule 32:1.15.

[Court Order April 20, 2005, effective July 1, 2005]

COUNSELOR

Rule 32:2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied. In the final analysis, the lawyer should always remember that the decision whether to pursue or forgo legally available objectives or methods because of nonlegal factors is ultimately for the client and not for the lawyer.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession.

Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under rule 32:1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under rule 32:1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:2.2 (RESERVED)

Rule 32:2.3: EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by rule 32:1.6.

Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. *See* rule 32:1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this rule. *See* rule 32:4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by rule 32:1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. *See* rule 32:1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. *See* rules 32:1.6(a) and 32:1.0(e).

Financial Auditor's Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:2.4: LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other laws that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association, and the Society of Professionals in Dispute Resolution. In 1987, the supreme court adopted the Rules Governing Standards of Practice for Lawyer Mediators in Family Disputes, chapter 11 of the Iowa Court Rules. Lawyers engaged in family law mediation should carefully review these rules because they address matters of special concern and state different and more restrictive rules on conflicts of interest.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 32:1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Iowa Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (*See* rule 32:1.0(m)), the lawyer's duty of candor is governed by rule 32:3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by rule 32:4.1.

[Court Order April 20, 2005, effective July 1, 2005]

ADVOCATE

Rule 32:3.1: MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the

limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action, defense, or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

[3] The lawyer's obligations under this rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this rule.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by rule 32:1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See rule 32:1.0(m) for the definition of “tribunal.” It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal’s adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate’s duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client’s behalf, and not assertions by the lawyer. *Compare* rule 32:3.1. However, an assertion purporting to be on the lawyer’s own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in rule 32:1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with rule 32:1.2(d), see the comment to that rule. See also the comment to rule 32:8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client’s wishes. This duty is premised on the lawyer’s obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness’s testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. An advocate’s obligation under the Iowa Rules of Professional Conduct is subordinate to a court’s directive requiring counsel to present the accused as a witness or to allow the accused to give a narrative statement if the accused so desires. *See also* comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer’s reasonable belief that evidence is false does not preclude its presentation

to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. *See* rule 32:1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. *See also* comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal, and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by rule 32:1.6. It is for the tribunal then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal, but also loss of the case, and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. *See* rule 32:1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating, or otherwise unlawfully communicating with a witness, juror, court official, or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence, or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A proceeding has concluded within the meaning of this rule when it is beyond the power of a tribunal to correct, modify, reverse, or vacate a final judgment, or to grant a new trial.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be

presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by rule 32:1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see rule 32:1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this rule or as otherwise permitted by rule 32:1.6.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. The law may make it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. The law may permit a lawyer to take temporary possession of physical evidence of client crimes for the

purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, the law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses, including loss of time in attending or testifying, or to compensate an expert witness on terms permitted by law. It is improper to pay an occurrence witness any fee other than as authorized by law for testifying and it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. *See also* rule 32:4.2.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress, or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Iowa Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters, or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. *See* rule 32:1.0(m).

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.6: TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

- (4) the scheduling or result of any step in litigation;**
- (5) a request for assistance in obtaining evidence and information necessary thereto;**
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and**
- (7) in a criminal case, in addition to subparagraphs (1) through (6):**
 - (i) the identity, residence, occupation, and family status of the accused;**
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;**
 - (iii) the fact, time, and place of arrest; and**
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.**
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.**
- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).**
- (e) Any communication made under paragraph (b) that includes information that a defendant will be or has been charged with a crime must also include a statement explaining that a criminal charge is merely an accusation and the defendant is presumed innocent until and unless proven guilty.**

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at ensuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations, and mental disability proceedings, and perhaps other types of litigation. Rule 32:3.4(c) requires compliance with such rules.

[3] The rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1) the character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of

guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See rule 32:3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.7: LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by rule 32:1.7 or rule 32:1.9.

Comment

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting

the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in rules 32:1.7, 32:1.9, and 32:1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with rule 32:1.7 or 32:1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with rule 32:1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by rule 32:1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. *See* rule 32:1.7. *See* rule 32:1.0(b) for the definition of "confirmed in writing" and rule 32:1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by rule 32:1.7 or rule 32:1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by rule 32:1.10 unless the client gives informed consent under the conditions stated in rule 32:1.7 or 32:1.9.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows or reasonably should know is not supported by probable cause;

(b) make reasonable efforts to ensure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;
(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
(3) there is no other feasible alternative to obtain the information; and
(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 32:3.6 or this rule.

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. *See generally* ABA Standards of Criminal Justice Relating to the Prosecution Function. Applicable law may require other measures by the prosecutor, and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of rule 32:8.4.

[2] A defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence. In addition, paragraph (c) does not apply to a defendant charged with a simple misdemeanor for which the prosecutor reasonably believes the defendant will not be incarcerated.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest. For purposes of paragraph (d), evidence tending to negate the guilt of the accused includes evidence that tends to impeach a witness for the State.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements rule 32:3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this comment is intended to restrict the statements which a prosecutor may make which comply with rule 32:3.6(b) or 32:3.6(c) and with rule 32:3.6(e).

[6] Like other lawyers, prosecutors are subject to rules 32:5.1 and 32:5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:3.9: ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity

and shall conform to the provisions of rules 32:3.3(a) through (c), 32:3.4(a) through (c), and 32:3.5.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. In all such appearances the lawyer shall identify the client if identification of the client is not prohibited by law. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying a client. *See* rules 32:3.3(a)-(c), 32:3.4(a)-(c), and 32:3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by rules 32:4.1 through 32:4.4.

[4] A lawyer representing a client before a governmental body in a nonadjudicative proceeding is engaged in the practice of law, even if such undertakings could also be engaged in by nonlawyers. Accordingly, a client who employs a lawyer to represent that client in lobbying or other advocacy before governmental bodies is entitled to assume that the lawyer will do so pursuant to the lawyer's professional obligations under these rules, specifically including those provisions concerning confidentiality, competence, and conflicts of interest.

[Court Order April 20, 2005, effective July 1, 2005]

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 32:4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client, a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or**
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 32:1.6.**

Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 32:8.4.

Statements of Fact

[2] This rule refers to statements of fact. Whether a particular statement should be regarded as

one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under rule 32:1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in rule 32:1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation, or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by rule 32:1.6.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with rule 32:1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited-representation lawyer as to the subject matter within the limited scope of representation.

Comment

[1] This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

[2] This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

[4] This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. *See* rule 32:8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a

client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. *Compare* rule 32:3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. *See* rule 32:4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. *See* rule 32:1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 32:4.3.

[Court Order April 20, 2005, effective July 1, 2005; March 12, 2007]

Rule 32:4.3: DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see rule 32:1.13(f).

[2] The rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents

that require the person's signature, and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship. For example, present or former organizational employees or agents may have information protected by the attorney-client evidentiary privilege or the work product doctrine of the organization itself. If the person contacted by the lawyer has no authority to waive the privilege, the lawyer may not deliberately seek to obtain the information in this manner.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document has been waived. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. *See* rules 32:1.2 and 32:1.4.
[Court Order April 20, 2005, effective July 1, 2005]

LAW FIRMS AND ASSOCIATIONS

Rule 32:5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Iowa Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Iowa Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Iowa Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. *See* rule 32:1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Iowa Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* rule 32:5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members, and the partners may not assume that all lawyers associated with the firm will inevitably conform to the rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. *See also* rule 32:8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification, or knowledge of the violation.

[7] Apart from this rule and rule 32:8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

[8] The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Iowa Rules of Professional Conduct. *See* rule 32:5.2(a). [Court Order April 20, 2005, effective July 1, 2005]

Rule 32:5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Iowa Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Iowa Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under rule 32:1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Iowa Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Iowa Rules of Professional Conduct. *See* comment [1] to rule 32:5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Iowa Rules of Professional Conduct if engaged in by a lawyer.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of rule 32:1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

[1] The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. *See also* rule 32:1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:5.5: UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise

out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* rule 32:5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. *See also* rules 32:7.1(a) and 32:7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of the lawyer's clients, the public, or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory, or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who, while technically admitted, is not authorized to practice because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction.

For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.

[14a] Lawyers should consult Iowa Ct. R. 31.17 when they are not admitted to practice law in Iowa but desire to temporarily provide pro bono legal services or to practice law temporarily in Iowa following a determination that there has been a major disaster in Iowa or another jurisdiction.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become

admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers, and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer must register and follow the requirements of Iowa Court Rule 31.16.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation, or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraph (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. *See* rule 32:8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraph (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See* rule 32:1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by rules 32:7.1 to 32:7.5, 32:7.7, and 32:7.8.

[Court Order April 20, 2005, effective July 1, 2005; May 14, 2007]

Rule 32:5.6: RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to rule 32:1.17.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:5.7: RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Iowa Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to ensure that a person obtaining the

law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 32:5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all of the Iowa Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See, e.g.*, rule 32:8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer’s provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Iowa Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Iowa Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to ensure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity’s operations, the rule requires the lawyer to take reasonable measures to ensure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Iowa Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer’s control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with rule 32:1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to ensure that a person using law-related services understands the practical effect or significance of the inapplicability of the Iowa Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to ensure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with

respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the rule cannot be met. In such a case a lawyer will be responsible for ensuring that both the lawyer's conduct and, to the extent required by rule 32:5.3, that of nonlawyer employees in the distinct entity that the lawyer controls comply in all respects with the Iowa Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing financial planning, accounting, economic analysis, social work, psychological counseling, and non-legal consulting such as engineering, medical, or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the rules addressing conflict of interest (rules 32:1.7 through 32:1.11, especially rules 32:1.7(a)(2) and 32:1.8(a), (b), and (f)), and to scrupulously adhere to the requirements of rule 32:1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with rules 32:7.1 through 32:7.5, 32:7.7, and 32:7.8, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of this state's decisional law.

[11] When the full protections of all of the Iowa Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest, and permissible business relationships with clients. *See also* rule 32:8.4 (Misconduct).

[12] Certain services that may be performed by nonlawyers nonetheless are treated as the practice of law in Iowa when performed by lawyers, including consummation of real estate transactions, preparation of tax returns, legislative lobbying, and estate planning. *See* rule 32:3.9, cmt. [4]; Iowa Ct. R. 37.5. Accordingly, the lawyer providing such services must at all times and under all circumstances comply fully with the Iowa Rules of Professional Conduct.

[Court Order April 20, 2005, effective July 1, 2005]

PUBLIC SERVICE

Rule 32:6.1: VOLUNTARY PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, or charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system, or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a

responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation or by the Iowa Lawyer Trust Account Commission, or other comparable non-profit programs offering legal services to the economically disadvantaged, and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers, and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2) and paragraphs (b)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b)(3), to the extent permitted by such restrictions.

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural, and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this paragraph.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator, and engaging in legislative lobbying to improve the law, the legal system, or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono

responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this rule.

[12] The responsibility set forth in this rule is not intended to be enforced through disciplinary process.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:6.2: ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Iowa Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. *See* rule 32:6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, *see* rule 32:1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the rules.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:6.3: MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under rule 32:1.7; or

(b) where the decision or action could have a material adverse effect on the representation

of a client of the organization whose interests are adverse to a client of the lawyer.

Comment

[1] Lawyers should be encouraged to support and participate in legal services organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:6.4: LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* rule 32:1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly rule 32:1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:6.5: NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to rules 32:1.7 and 32:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to rule 32:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by rule 32:1.7 or 32:1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 32:1.10 is inapplicable to a representation governed by this rule.

Comment

[1] Legal services organizations, courts, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics, or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer

to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, rules 32:1.7, 32:1.9, and 32:1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. *See* rule 32:1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Iowa Rules of Professional Conduct, including rules 32:1.6 and 32:1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with rule 32:1.7 or 32:1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with rule 32:1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by rule 32:1.7 or 32:1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that rule 32:1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with rule 32:1.10 when the lawyer knows that the lawyer's firm is disqualified by rule 32:1.7 or 32:1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, rules 32:1.7, 32:1.9(a), and 32:1.10 become applicable.

[Court Order April 20, 2005, effective July 1, 2005]

INFORMATION ABOUT LEGAL SERVICES

Rule 32:7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not communicate with the public using statements that are unverifiable. In addition, advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services.

Comment

[1] This rule governs all communications about a lawyer's services, including advertising permitted by rule 32:7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful and verifiable.

[2] Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] A lawyer should ensure that information contained in any advertising which the lawyer publishes, or causes to be published, is relevant, is dignified, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems that hinder rather than facilitate intelligent selection of counsel. Appeal should not be made to the prospective client's emotions, prejudices, or personal likes or dislikes. Care should be exercised to ensure that false hopes of success or undue expectations are not communicated. Only unambiguous information relevant to a layperson's decision regarding legal rights or the selection of counsel, provided in ways that comport with the

dignity of the profession and do not demean the administration of justice, is appropriate in public communications.

[4] See also rule 32:8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:7.2: ADVERTISING

(a) The following communications shall not be considered advertising and accordingly are not subject to rules 32:7.2, 32:7.3, and 32:7.4: (1) communications or solicitations for business between lawyers; (2) communications between a lawyer and an existing or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated; or (3) communications by a lawyer that are in reply to a request for information by a member of the public that was not prompted by unauthorized advertising by the lawyer; information available through a hyperlink on a lawyer's Web site shall constitute this type of communication. Nonetheless, any brochures or pamphlets containing biographical and informational data disseminated to existing clients, former clients, lawyers, or in response to a request for information by a member of the public shall include the disclosures required by paragraph (h) when applicable.

(b) Subject to the limitations contained in these rules, a lawyer may advertise services through written, recorded, or electronic communication, including public media. Any communication made pursuant to this rule shall include the name and office of at least one lawyer or law firm responsible for the content.

(c) Subject to the limitations contained in these rules, a lawyer licensed to practice law in Iowa may permit the inclusion of the lawyer's name, address, telephone number, and designation as a lawyer, in a telephone or city directory, subject to the following requirements:

(1) Only a lawyer's name, address, telephone number, and designation as a lawyer may be alphabetically listed in the residential, business, and classified sections of the telephone or city directory.

(2) Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a lawyer who has complied with rule 32:7.4(e) may be listed in classifications or headings identifying those fields or areas of practice as listed in rule 32:7.4(a). By further exception, a lawyer qualified under rule 32:7.4 to practice in the field of taxation law also may be listed under the general heading "Tax Preparation" or "Tax Return Preparation" either in lieu of or in addition to the general heading "Lawyers" or "Attorneys."

(3) All other telephone or city directory advertising permitted by these rules, including display or box advertisements, shall include the disclosures required by paragraph (h) when applicable.

(d) Subject to the limitations contained in these rules, a law firm may permit the inclusion of the firm name, address, and telephone number in a telephone or city directory, subject to the following requirements:

(1) The firm name, a list of its members, address, and telephone number may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.

(2) Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a law firm may be listed in each of the classifications or headings identifying those fields or areas of practice as listed in rule 32:7.4(a) in which one or more members of the firm are qualified by virtue of compliance with rule 32:7.4(e).

(3) All other telephone or city directory advertising permitted by these rules, including display or box advertising, may contain the firm name, address, and telephone number, and the names of the individual lawyer members of the firm. All display or box advertisements shall include within the advertisement the disclosures required by paragraph (h) when applicable.

(e) Information permitted by these rules, articulated only by a single nondramatic voice, not that of the lawyer, and with no other background sound, may be communicated by radio or television, or other electronic or telephonic media. In the case of television, no visual display shall be allowed except that allowed in print as articulated by the announcer. All such communications shall contain the disclosures required by paragraph (h) when applicable.

(f) Whether or not the advertisement contains fee information, a lawyer shall preserve for at least three years a copy of each advertisement placed in a newspaper, in the classified section of the telephone or city directory, or in a periodical, a tape of any radio, television, or other electronic or telephonic media commercial, or recording, and a copy of all information placed on the World Wide Web, and a record of the date or dates and name of the publication in which the advertisement appeared or the name of the medium through which it was aired.

(g) The following information may be communicated to the public in the manner permitted by this rule, provided it is presented in a dignified style:

(1) name, including name of law firm, names of professional associates, addresses, telephone numbers, Internet addresses and URLs, and the designation “lawyer,” “attorney,” “J.D.,” “law firm,” or the like;

(2) the following descriptions of practice:

(i) “general practice”;

(ii) “general practice including but not limited to” followed by one or more fields of practice descriptions set forth in rule 32:7.4(a)-(c);

(iii) fields of practice, limitation of practice, or specialization, but only to the extent permitted by rule 32:7.4; and

(iv) limited representation as authorized by rule 32:1.2(c);

(3) date and place of birth;

(4) date and place of admission to the bar of state and federal courts;

(5) schools attended, with dates of graduation, degrees, and other scholastic distinctions;

(6) public or quasi-public offices;

(7) military service;

(8) legal authorships;

(9) legal teaching positions;

(10) memberships, offices, and committee and section assignments in bar associations;

(11) memberships and offices in legal fraternities and legal societies;

(12) technical and professional licenses;

(13) memberships in scientific, technical, and professional associations and societies; and

(14) foreign language ability.

(h) Fee information may be communicated to the public in the manner permitted by this rule, provided it is presented in a dignified style.

(1) The following information may be communicated:

(i) the fee for an initial consultation;

(ii) the availability upon request of either a written schedule of fees, or an estimate of the fee to be charged for specific services, or both;

(iii) contingent fee rates, subject to rule 32:1.5(c) and (d), provided that the statement discloses whether percentages are computed before or after deduction of costs and advises the public that, in the event of an adverse verdict or decision, the contingent fee litigant could be liable for court costs, expenses of investigation, expenses of medical examinations, and costs of obtaining and presenting evidence;

(iv) fixed fees or range of fees for specific legal services;

(v) hourly fee rates; and

(vi) whether credit cards are accepted.

(2) If fixed fees or a range of fees for specific legal services are communicated, the lawyer must disclose, in print size at least equivalent to the largest print used in setting forth the fee information, the following information:

(i) that the stated fixed fees or range of fees will be available only to clients whose matters are encompassed within the described services; and

(ii) if the client’s matters are not encompassed within the described services, or if an hourly fee rate is stated, the client is entitled, without obligation, to a specific written estimate of the fees likely to be charged.

(3) For purposes of these rules, the term “specific legal services” shall be limited to the following services:

(i) abstract examinations and title opinions not including services in clearing title;

(ii) uncontested dissolutions of marriage involving no disagreement concerning custody of children, alimony, child support, or property settlement. *See* rule 32:1.7(c);

- (iii) wills leaving all property outright to one beneficiary and contingently to one beneficiary or one class of beneficiaries;
- (iv) income tax returns for wage earners;
- (v) uncontested personal bankruptcies;
- (vi) changes of name;
- (vii) simple residential deeds;
- (viii) residential purchase and sale agreements;
- (ix) residential leases;
- (x) residential mortgages and notes;
- (xi) powers of attorney;
- (xii) bills of sale; and
- (xiii) limited representation as authorized by rule 32:1.2(c).

(4) Unless otherwise specified in the public communication concerning fees, the lawyer shall be bound, in the case of fee advertising in the classified section of the telephone or city directory, for a period of at least the time between printings of the directory in which the fee advertisement appears and in the case of all other fee advertising for a period of at least ninety days thereafter, to render the stated legal service for the fee stated in the communication unless the client's matters do not fall within the described services. In that event or if a range of fees is stated, the lawyer shall render the service for the estimated fee given the client in advance of rendering the service.

(i) In the event a lawyer's communication seeks to advise the institution of litigation, the communication must also disclose that the filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the person so filing liable for malicious prosecution or abuse of process.

(j) A lawyer recommended by, paid by, or whose legal services are furnished by an organization listed in rule 32:7.7(d) may authorize, permit, or assist such organization to use means of dignified commercial publicity that does not identify any lawyer by name to describe the availability or nature of its legal services or legal service benefits.

(k) This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) in political advertisements when the professional status is germane to the political campaign or to a political issue;

(2) in public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients;

(3) in routine reports and announcements of a bona fide business, civic, professional, or political organization in which the lawyer serves as a director or officer;

(4) in and on legal documents prepared by the lawyer;

(5) in and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof; and

(6) in communications by a qualified legal assistance organization, along with the biographical information permitted under paragraph (g), directed to a member or beneficiary of such organization.

(l) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item or voluntarily give any information to such representatives which, if published in a news item, would be in violation of rule 32:7.1.

Comment

[1] Advertisements and public communications, whether in reputable legal directories, telephone directories, or newspapers, should be formulated to convey only information that is necessary for the client to make an appropriate selection. Competency may be a factor in the selection of a lawyer. However, competency cannot be determined from an advertisement. The cost of legal services may also be a factor in the selection of a lawyer. A layperson may be aided in the selection of a lawyer if the costs of legal services were available for comparison or could be considered in an atmosphere conducive to logic, reason, and reflection. This factual information can be made available through advertising. Care must be exercised to ensure that there is a proper basis for the comparison of costs

communicated in a manner that will truthfully inform, and not mislead, a prospective client as to the total costs. For example, to state an hourly charge and to characterize it as a “reasonable fee” is misleading because the total cost or fee can vary greatly depending upon the number of hours spent.

[2] The lack of sophistication on the part of many members of the public concerning legal services and the importance of the interests affected by the choice of a lawyer require that special care be taken by lawyers to avoid misleading the public and to ensure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits to the public of a lawyer’s advertising depend upon its reliability and accuracy. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit. Fee advertising involves special concerns. With rare exception, lawyers render unique and varied services for each client, even as to so-called “routine” matters. When consulted about any matter, whether or not “routine,” a lawyer should make relevant inquiries, which may uncover the need for different services than those that the client originally sought. These factors make it difficult to set a fixed fee or a range of fees for a specific legal service in advance of rendering the service and provide temptation to depart from an advertised fee or to fail to render a needed service. Thus, a lawyer who advertises a fee for a service should exercise particular caution to avoid misleading prospective clients and should include appropriate disclaimers. A lawyer should also scrupulously avoid the use of fee advertising as an indirect means of attracting clients in the hope of performing other, more lucrative, legal services. In communications concerning a lawyer’s fees, the lawyer may use restrained subjective characterizations of rates or fees such as “reasonable,” “moderate,” and “very reasonable,” but shall avoid all unrestrained subjective characterizations of rates or fees, such as, but not limited to, “cut rate,” “lowest,” “giveaway,” “below cost,” “discount,” and “special.”

[3] All disclosures required to be published by these rules shall be in 9-point type or larger. Whenever a disclosure or notice is required by these rules, a lawyer or law firm hosting a site on the World Wide Web shall display the required disclosure or notice on the site’s home page.

[4] Nothing contained in these rules shall prohibit a lawyer from permitting the inclusion in reputable law lists and law directories intended primarily for the use of the legal profession of such information as traditionally has been included in these publications whether published in print or on the Internet or other electronic system.

[5] Any member of the bar desiring to expand the information authorized for disclosure pursuant to this rule or to provide for its dissemination through forums other than as authorized herein, may file an application with the supreme court specifying the requested change. Court approval of the application is required before an attorney may engage in advertising that includes the expanded information or is disseminated through the new forum.

[6] When the court receives a request to expand or constrict the list of “specific legal services” in rule 32:7.2(h)(3), it will consider the following criteria in determining which services should be included in the list:

(1) the description of the service would not be misunderstood by the average layperson or be misleading or deceptive;

(2) substantially all of the service normally can be performed in the lawyer’s office with the aid of standardized forms and office procedures;

(3) the service does not normally involve a substantial amount of legal research, drafting of unique documents, investigation, court appearances, or negotiation with other parties or their attorneys; and

(4) competent performance of the service normally does not depend upon ascertainment and consideration of more than a few varying factual circumstances.

[Court Order April 20, 2005, effective July 1, 2005; November 19, 2007]

Rule 32:7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client.

(b) A lawyer may engage in written solicitation by direct mail or e-mail to persons or groups who may need specific legal services because of a condition or occurrence known to the soliciting lawyer. A lawyer must retain a copy of the written solicitation for at least three years. Simultaneously with the mailing of the solicitation, the lawyer must file a copy of it with the Iowa Supreme Court Attorney Disciplinary Board along with a signed affidavit in which the lawyer attests to:

(1) the truthfulness of all facts contained in the communication;
(2) how the identity and specific legal need of the intended recipients were discovered; and
(3) how the identity and specific need of the intended recipients were verified by the soliciting lawyer.

(c) Information permitted by these rules may be communicated by direct mail or e-mail to the general public other than persons or groups of persons who may be in need of specific or particular legal services because of a condition or occurrence which is known or could with reasonable inquiry be known to the advertising lawyer. A lawyer must simultaneously file a copy of the communication with the Iowa Supreme Court Attorney Disciplinary Board and must retain a copy of the communication for at least three years.

(d) All communications authorized by paragraphs (b) and (c) shall contain the disclosures required by rule 32:7.2(h) when applicable. These communications shall, in addition to other required disclosures, carry the following disclosure in 9-point or larger type: “ADVERTISEMENT ONLY.”

Comment

[1] There is a potential for abuse inherent in direct in-person, live telephone, or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[2] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written communications permitted under rule 32:7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written communications which may be mailed make it possible for a prospective client to be informed about the need for legal services and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone, or real-time electronic persuasion that may overwhelm the client’s judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows cleanly as well as freely. Because rule 32:7.2(f) requires that the contents of advertisements and communications permitted under rule 32:7.2 be preserved, the contents cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of rule 32:7.1. The contents of direct in-person, live telephone, or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, such conversations are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a current or former client or with whom the lawyer has a close personal or family relationship. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, a lawyer may suggest the need for legal services to such individuals as authorized in rule 32:7.8. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of rule 32:7.1 is prohibited.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer may communicate the fact that the lawyer practices in or limits the lawyer's practice to certain fields of law as authorized by this rule. Subject to the exceptions and requirements of this rule, a lawyer may identify or describe the lawyer's practice by reference to the following fields of practice:

**Administrative Law
Adoption Law
Agricultural Law
Alternate Dispute Resolution
Antitrust & Trade Regulation
Appellate Practice
Aviation & Aerospace
Banking Law
Bankruptcy
Business Law
Civil Rights & Discrimination
Collections Law
Commercial Law
Communications Law
Constitutional Law
Construction Law
Contracts
Corporate Law
Criminal Law
Debtor and Creditor
Education Law
Elder Law
Election, Campaign & Political
Eminent Domain
Employee Benefits
Employment Law
Energy
Entertainment & Sports
Environmental Law
Family Law
Finance
Franchise Law
Government
Government Contracts
Health Care
Immigration
Indians & Native Populations
Information Technology Law
Insurance
Intellectual Property
International Law
International Trade
Investments
Juvenile Law
Labor Law
Legal Malpractice
Litigation
Media Law
Medical Malpractice
Mergers & Acquisitions
Military Law**

Municipal Law
Natural Resources
Nonprofit Law
Occupational Safety & Health
Pension & Profit Sharing Law
Personal Injury
Product Liability
Professional Liability
Public Utility Law
Real Estate
Securities
Social Security Law
Taxation
Tax Returns
Technology and Science
Toxic Torts
Trademarks & Copyright Law
Transportation
Trial Law
Veterans Law
Wills, Trusts, Estate Planning & Probate Law
Workers' Compensation
Zoning, Planning & Land Use

Any member of the bar desiring to expand this list may file an application with the supreme court specifying the requested change.

In describing the field of practice the lawyer may use the suffix “law,” “lawyer,” “matters,” “cases,” or “litigation.”

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patents,” “Patent Attorney,” “Patent Lawyer,” or “Registered Patent Attorney.”

(c) A lawyer engaged in Admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty,” or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by the Iowa Supreme Court Attorney Disciplinary Board; and

(2) the name of the certifying organization is clearly identified in the communication.

(e) Prior to publicly describing one’s practice as permitted in paragraph (a) and (c), a lawyer shall comply with the following prerequisites:

(1) For all fields of practice designated, a lawyer must have devoted the greater of 100 hours or 10 percent of the lawyer’s time spent in the actual practice of law to each indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least ten hours of accredited continuing legal education courses of study in each indicated field of practice during the preceding calendar year.

(2) A lawyer who wishes to use the terms “practice limited to . . .” or “practicing primarily in . . .” must have devoted the greater of 400 hours or 40 percent of the lawyer’s time spent in the actual practice of law to each separate indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least fifteen hours of accredited continuing legal education courses of study in each separate indicated field of practice during the preceding calendar year.

Prior to communication of a description or indication of limitation of practice, a lawyer shall report the lawyer’s compliance with the eligibility requirements of this paragraph each year to the Commission on Continuing Legal Education. *See Iowa Ct. R. 41.9.*

(f) A lawyer describing the lawyer’s practice as “General practice including but not limited to” followed by one or more fields of practice descriptions set forth in this rule need not comply with the eligibility requirements of paragraph (e).

Comment

[1] In some instances lawyers limit their practice to, or practice primarily in, certain fields of law. In the absence of controls to ensure the existence of special competence, lawyers should not be permitted to hold themselves out as specialists or as having special training or ability other than in the field of patent or admiralty law where a holding out as a specialist historically has been permitted. However, lawyers who comply with this rule may hold themselves out publicly as practicing in, or limiting their practice to, certain fields of law, but such communications are subject to the false and misleading standard applied in rule 32:7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by the Iowa Supreme Court Attorney Disciplinary Board. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[Court Order April 20, 2005, effective July 1, 2005; March 12, 2007; November 19, 2007; March 12, 2012]

Rule 32:7.5: PROFESSIONAL NOTICES, LETTERHEADS, OFFICES, AND SIGNS

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates rule 32:7.1. A lawyer or law firm may use the following professional cards, signs, letterheads, or similar professional notices or devices if they are in dignified form:

(1) A professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the lawyer's law firm, and any information permitted under rule 32:7.4. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in the lawyer's association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under rule 32:7.4. A dignified announcement of a change in location of office, the addition of a new partner, equity holder or associate, or a change in the name of a law firm may be published in one or more newspapers of general circulation over a period of no more than four weeks.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under rule 32:7.4.

(4) A letterhead of a lawyer identifying the lawyer by name and as a lawyer and giving the lawyer's addresses, telephone numbers, the name of the lawyer's law firm, associates, and any information permitted under rule 32:7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates related to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of

the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm. However, the name of a professional corporation, professional association, professional limited liability company, or registered limited liability partnership may contain "P.C.," "P.A.," "P.L.C.," "L.L.P.," or similar symbols indicating the nature of the organization and, if otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(f) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on the lawyer's letterhead, office sign, or professional card, and shall not be identified as a lawyer in any publication in connection with the lawyer's other profession or business.

Comment

[1] A firm may be designated by the names of all or some of its members or by the names of deceased members when there has been a continuing succession in the firm's identity. The use of a trade name or an assumed name could mislead laypersons concerning the identity, responsibility, and status of those practicing under a trade name or an assumed name; therefore, such a practice is not permitted by this rule.

[2] In order to avoid the possibility of misleading persons with whom they deal, lawyers should be scrupulous in the representation of their professional status. With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

[3] A lawyer who occupies a judicial, legislative, or public executive or administrative position and who has the right to practice law concurrently may allow the lawyer's name to remain in the name of the firm if actively continuing to practice law as a member of the firm. Otherwise, the lawyer's name should be removed from the firm name, the lawyer should not be identified as a past or present member of the firm, and the lawyer should not be held out as being a practicing lawyer. The name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

[4] The term "clinic," "center," or any other similar term shall not be used in any communication to the public unless the practice of the lawyer or the lawyer's firm is limited to specific legal services as described in rule 32:7.2(h)(3) for which costs of rendering the service can be substantially reduced because of the repetitive nature of the services performed and the use of standardized forms and office procedures.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:7.6: POLITICAL CONTRIBUTIONS TO OBTAIN LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Comment

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to judges on the ballot for judicial retention and to candidates for

other public offices. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term “political contribution” denotes any gift, subscription, loan, advance, or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party, or campaign committee to influence or provide financial support for retention of a judge or election of a person to government office. Political contributions in initiative and referendum elections are not included. For purposes of this rule, the term “political contribution” does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term “government legal engagement” denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term “appointment by a judge” denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian, or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications, and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term “lawyer or law firm” includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer’s firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, rule 32:8.4(b) is implicated.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:7.7: RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

(a) A lawyer shall not, except as authorized in rules 32:7.2 and 32:7.3, recommend employment of the lawyer, the lawyer’s partner, or an associate of the lawyer, as a private practitioner, to a nonlawyer who has not sought advice regarding employment of a lawyer.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by rule 32:7.2;

(2) pay the usual charges of a lawyer referral service operated or sponsored by the bar association; and

(3) pay for a law practice in accordance with rule 32:1.17.

(c) A lawyer shall not request that a person or organization recommend or promote the use of the lawyer’s services or those of a partner, associate, or any other lawyer affiliated with the lawyer’s firm, as a private practitioner, except as authorized in rules 32:7.2 and 32:7.3, and except that:

(1) A lawyer may request referrals from a lawyer referral service operated or sponsored by the bar association.

(2) A lawyer may participate in a directory listing by Iowa lawyers in an organization or association of lawyers engaged in a particular area of practice upon authorization by the Iowa Supreme Court Attorney Disciplinary Board. See Iowa Ct. R. 34.14(1).

(3) A lawyer may cooperate with the legal service activities of any of the offices or

organizations enumerated in paragraphs (d)(1) through (4) and may perform legal services for those to whom the lawyer was recommended by the office or organization to do such work if both of the following requirements are met:

(i) The person to whom the recommendation is made is a member or beneficiary of such office or organization.

(ii) The lawyer remains free to exercise independent professional judgment on behalf of the client.

(d) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partners or associates or any other lawyer affiliated with the lawyer's firm, except as permitted by this rule. However, this rule does not prohibit a lawyer, a partner, an associate, or any other lawyer affiliated with the lawyer or firm, from being recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of the lawyer's services or those of a partner, associate, or any other lawyer affiliated with the lawyer or the firm:

(1) A legal aid office or public defender office operated or sponsored by a duly accredited law school, a bona fide nonprofit community organization, or a governmental agency, or operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association.

(4) A legal services plan. A legal services plan is any bona fide organization that recommends, furnishes, or pays for legal services to its members or its beneficiaries provided all of the following conditions are satisfied:

(i) Such organization, including any affiliate, is organized and operated so that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised, or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(ii) Neither the lawyer, nor any partner, associate, or other lawyer affiliated with the lawyer's firm, nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate, or affiliated lawyer.

(iii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(iv) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(v) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, independent of the arrangement, if such member or beneficiary so desires, and at the person's own expense, select counsel other than that furnished, selected, or approved by the organization for the particular matter involved.

(vi) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that the representation by counsel furnished, selected, or approved would be unethical, improper, or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(vii) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court, and other legal requirements that govern its legal service operations.

(viii) The legal services plan is developed, administered, and operated so as to prevent a third party from interfering with or controlling a lawyer's performance of his or her duties or a third party's receipt of any part of the consideration paid to a lawyer for furnishing legal services.

(ix) There is no publicity and solicitation concerning the arrangement except by means of simple, dignified announcements. Such announcements may only set forth the purpose and activities of the organization and the nature and extent of the benefits provided under the arrangement. The announcements shall not identify the lawyers who render the legal services, and such announcement must be solely for the good faith purpose of developing,

administering, or operating the arrangement, and not for the purpose of soliciting business for any specific lawyer. Nothing in this rule shall prohibit a statement in response to individual inquiries regarding the identities of the lawyers rendering services for the organization. Such responses may provide the names, addresses, and telephone numbers of such lawyers.

(x) Such organization has filed with the Iowa Supreme Court Attorney Disciplinary Board on or before July 1 of each year the report required by Iowa Ct. R. 34.14(2). A lawyer will not be deemed in violation of this provision if such organization has failed to file the required report so long as the lawyer does not know or have cause to know of such failure.

(e) A lawyer shall not accept employment when the lawyer knows or reasonably should know that the person seeking legal services does so as a result of conduct prohibited under this rule.

Comment

[1] Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers—and disclosure of relevant information about the lawyer and the lawyer's practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend employment. A lawyer should not compensate another person for a recommendation of employment, for influencing a prospective client to employ the lawyer, or to encourage future recommendations.

[2] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by rule 32:7.2, including the costs of print directory listings, on-line directory listings, newspaper advertisements, and television and radio airtime. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, and Web site designers. See rule 32:5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[3] The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layperson to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

[4] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to ensure that the activities of the plan or service are compatible with the lawyer's professional obligations. See rule 32:5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate rule 32:7.3.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:7.8: SUGGESTION OF NEED OF LEGAL SERVICES

(a) A lawyer who has given unsolicited advice in-person or by telephone to a layperson to obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, existing client, or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated.

(2) A lawyer may accept employment that results from personal participation in activities designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by

any of the offices or organizations enumerated in rule 32:7.7(d)(1) through (4), to the extent and under the conditions prescribed therein.

(3) A lawyer who is recommended, furnished, or paid by a qualified legal assistance organization enumerated in rule 32:7.7(d)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(b) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as such activities do not emphasize the lawyer's own professional experience or reputation and the lawyer does not undertake to give individual advice.

(c) If success in asserting rights or defenses of a client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

Comment

[1] Whether a lawyer acts properly in volunteering in-person advice to a layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laypersons in recognizing legal problems. The advice is proper only if the lawyer is motivated by a desire to protect one who does not recognize that one may have legal problems or who is ignorant of one's legal rights or obligations. The advice is improper if the lawyer is motivated by a desire to obtain personal benefit, secure personal publicity, or cause legal action to be taken merely to harass or injure another. Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers in-person advice likely to produce legal controversy may well be suspect if the lawyer receives professional employment or other benefits as a result. A lawyer who volunteers in-person advice that one should obtain the services of a lawyer generally should not accept employment, compensation, or other benefit in connection with that matter except as permitted by this rule.

[2] The public's need for legal services is met only if laypersons recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laypersons to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

[3] The legal profession should assist laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers.

[4] A lawyer who writes or speaks for the purpose of educating members of the public to recognize legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laypersons should caution laypersons not to attempt to solve individual problems upon the basis of the information contained therein.

[Court Order April 20, 2005, effective July 1, 2005]

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 32:8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure

of information otherwise protected by rule 32:1.6 or Iowa Code section 622.10.**Comment**

[1] The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or disciplinary matter as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including rule 32:1.6, Iowa Code section 622.10, and, in some cases, rule 32:3.3.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:8.2: JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Iowa Rules of Professional Conduct shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by rule 32:1.6 or Iowa Code section 622.10 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Iowa Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of rule 32:1.6 or Iowa Code section 622.10. However, a lawyer should encourage a client to consent to disclosure where prosecution of the professional misconduct would not substantially prejudice the client's interests.

[3] (Reserved)

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship and Iowa Code section 622.10.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Illegal conduct can reflect adversely on fitness to practice law. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. For another reference to discrimination as

professional misconduct, see paragraph (g).

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 32:1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of a lawyer. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

[6] It is not professional misconduct for a lawyer to advise clients or others about or to supervise or participate in lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights or in lawful intelligence-gathering activity, provided the lawyer's conduct is otherwise in compliance with these rules. "Covert activity" means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. Covert activity may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place, or will take place in the foreseeable future. Likewise, a government lawyer who supervises or participates in a lawful covert operation which involves misrepresentation or deceit for the purpose of gathering relevant information, such as law enforcement investigation of suspected illegal activity or an intelligence-gathering activity, does not, without more, violate this rule.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 32:8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in Iowa is subject to the disciplinary authority of Iowa, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Iowa is also subject to the disciplinary authority of Iowa if the lawyer provides or offers to provide any legal services in Iowa. A lawyer may be subject to the disciplinary authority of both Iowa and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of Iowa, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in Iowa is subject to the disciplinary authority of Iowa. Extension of the disciplinary authority of Iowa to other lawyers who provide or offer to provide legal services in Iowa is for the protection of the citizens of Iowa. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this rule. *See* Iowa Ct. R. 35.19. A lawyer who is subject to Iowa's disciplinary authority under rule 32:8.5(a) appoints the Clerk of the Supreme Court of Iowa to receive service of process with respect to Iowa disciplinary matters. The fact that the lawyer is subject to the disciplinary authority of Iowa may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules

that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits, or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, in applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties, or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

[Court Order April 20, 2005, effective July 1, 2005; February 20, 2012]

CHAPTER 34
RULES OF PROCEDURE OF THE IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD

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Form 1:	Iowa Supreme Court Attorney Disciplinary Board Complaint Form

CHAPTER 34
RULES OF PROCEDURE OF THE IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD

Rule 34.1 Complaints. Complaints shall be accepted from any person, firm, or other entity alleging that a lawyer has committed a disciplinary infraction. The Iowa Supreme Court Attorney Disciplinary Board may, upon its own motion, initiate any investigation or disciplinary action.

[Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.2 Form of complaint. Complaint forms, found in rule 34.23, shall be available to the public from the Iowa Supreme Court Attorney Disciplinary Board, the chair of the board, or the chair's designee. Complaints must be certified under penalty of perjury, except when filed by an officer of the court, and shall include whatever exhibits the complainant desires to submit.

[Court Order December 12, 1974; June 20, 1980; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.3 Filing. Complaints shall be filed, without charge, with the Iowa Supreme Court Attorney Disciplinary Board.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 34.4 Procedure.

34.4(1) Upon receiving a complaint, the assistant director for attorney discipline shall evaluate all information coming to his or her attention from the complaint or from any other sources alleging attorney misconduct or incapacity. The assistant director shall have the authority to decline to open an investigation of a complaint if the information, if true, would not constitute misconduct or incapacity, or if the complaint is facially frivolous, stale, lacking in adequate factual detail, duplicative, or outside the board's jurisdiction, or does not otherwise reasonably warrant investigation. The board may adopt policies to guide the assistant director in the exercise of this authority.

34.4(2) The board shall make a record indicating the date filed, the name and address of the complainant, the name and address of the respondent attorney, and a brief statement of the charges made. This record ultimately shall show the final disposition of the matter when it is completed.

34.4(3) The board shall keep all files in permanent form and confidential, unless otherwise provided or directed in writing by the chair of the board, or the chair's designee, for disciplinary purposes or by a specific rule of the supreme court. All such files shall be available for examination and reproduction, by the designated officer or agent of the Client Security Commission, pursuant to proceedings under chapter 39 of the Iowa Court Rules.

Any such files, except for the work product of staff counsel, investigators, or administrators of the board, shall be provided to the respondent within a reasonable time upon the respondent's request. For purposes of this rule, "work product" does not include a written statement signed or otherwise adopted or approved by the person making it or a contemporaneous and substantially verbatim transcript or recording of a person's oral statement.

34.4(4) A complaint declined pursuant to this rule shall not be deemed a complaint for any purpose. A complaint declined pursuant to this rule shall not be docketed under rule 34.4(2), nor shall it be reported or disclosed by the board or the respondent to any person or authority for any reason.

[Court Order December 12, 1974; November 2, 1981; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, and July 1, 2005, effective July 1, 2005; February 20, 2012]

Rule 34.5 Board procedure. Upon receipt of any complaint, the board shall notify the complainant in writing that the complaint has been received and will be acted upon or that pursuant to rule 34.4(1) no action will be taken.

[Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 34.6 Notification of respondent—response.

34.6(1) The board shall forward to the respondent a copy of the complaint and copies of chapters 34 and 35 of the Iowa Court Rules. However, if the complaint is declined pursuant to rule 34.4(1), the board shall not notify the respondent and no response shall be required.

34.6(2) The board may forward the complaint to the respondent by restricted certified mail, marked “Confidential,” to the respondent’s last address as shown by records accessible to the court or by personal service in the manner of an original notice in civil suits.

34.6(3) If service cannot be obtained pursuant to rule 34.6(2), the board may serve the complaint on the clerk of the supreme court who is appointed to receive service on behalf of lawyers subject to Iowa’s disciplinary authority. Iowa R. Prof’l Conduct 32:8.5 cmt. [1]. Service upon the clerk of the supreme court is deemed to be receipt of the complaint by the respondent. Simultaneously with serving a complaint on the clerk of the supreme court, the board shall forward the complaint to the respondent by restricted certified mail, marked “Confidential,” to the respondent’s last address as shown by records accessible to the court, and the board shall file with the clerk of the supreme court an affidavit attesting that it has done so.

34.6(4) The respondent is required to provide a written response within 20 days of receipt of the complaint.

[Court Order December 12, 1974; May 13, 1983; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 34.7 Failure to respond—notice—effect.

34.7(1) *Failure to respond—separate ethical violation.* If after 20 days no response has been received, the respondent shall be notified by restricted certified mail that unless a response is made within 10 days from receipt of notice, the board may file a complaint with the Grievance Commission of the Supreme Court of Iowa for failure to respond, and concerning all or any portion of the matter about which the original complaint was made. If service cannot be obtained by restricted certified mail, the board may serve the notice on the clerk of the supreme court who is appointed to receive service on behalf of attorneys subject to Iowa’s disciplinary authority. Iowa R. of Prof’l Conduct 32:8.5 cmt. [1]. Service upon the clerk of the supreme court is deemed to be receipt of the notice by the respondent.

34.7(2) *Enlargement of time to respond.* The board may grant an enlargement of time to respond under rule 34.6 or 34.7(1) for good cause shown.

34.7(3) *Failure to respond—temporary suspension.* If a response is not provided within 10 days of receipt of the notice issued pursuant to rule 34.7(1) or within the time allowed under rule 34.7(2), the board shall certify the respondent’s failure to respond to the clerk of the supreme court.

a. Upon receipt of the board’s certificate, the clerk shall issue a notice to the attorney that the attorney’s license to practice law will be temporarily suspended unless the attorney causes the board to file a withdrawal of the certificate within 20 days of the date of issuance of the clerk’s notice.

b. If the attorney responds to the complaint within the 20-day period, the board shall immediately withdraw the certificate and no suspension shall occur.

c. If the board has not withdrawn the certificate and the 20-day period expires, the court shall enter an order temporarily suspending the attorney’s license to practice law in the state of Iowa.

d. If the attorney responds to the complaint after a temporary suspension order is entered, the board shall, within 5 days of receiving the response, either withdraw the certificate or file with the supreme court a report indicating that the attorney has responded, but stating cause why the attorney’s license should not be reinstated and the suspension should be continued under the provisions of Iowa Ct. R. 35.4, 35.14, or 35.16.

e. If the board seeks to continue the suspension under the provisions of Iowa Ct. R. 35.4, 35.14, or 35.16, the supreme court shall either reinstate the attorney or enter an appropriate order under the applicable rule.

f. If the board files a withdrawal of the certificate after temporary suspension of the attorney’s license, the supreme court shall immediately reinstate the attorney’s license to practice law if the attorney is otherwise eligible under the rules of the court.

g. During the initial 30 days of a temporary suspension under this rule, the attorney shall give the notice required by Iowa Ct. R. 35.22 to those clients whose interests may be adversely affected by the attorney’s suspension.

h. When the suspension period under this rule exceeds 30 days, the attorney shall comply with the requirements of Iowa Ct. R. 35.22 as to all clients.

i. An attorney whose license is suspended under the provisions of rule 34.7(3)(c) shall pay a fee of \$100.00 as a condition precedent to reinstatement.

[Court Order December 12, 1974; November 16, 1984, effective November 26, 1984; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; April 25, 2008; February 20, 2012]

Rule 34.8 Board actions upon receipt of response.

34.8(1) Upon receipt of a response, the board shall do one of the following:

- a.* Dismiss the complaint, and so notify the complainant and the respondent in writing.
- b.* Cause the case to be docketed for consideration by the board at its next hearing-meeting.
- c.* Arrange for investigation of the complaint either by the board's counsel or a local bar association as the chair, or the chair's designee, deems appropriate.

(1) All investigations done by a person or entity other than the board's counsel or its in-house staff shall be done in a manner as directed and under the supervision of the board.

(2) The results of the investigation shall be forwarded to the board along with any recommendation for final action by the board.

34.8(2) The board shall have subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person designated to conduct the investigation on behalf of the board.

34.8(3) The board chair, or other board member in the absence of the chair, shall have authority to issue a subpoena.

34.8(4) The district court for the county in which the investigation is being conducted shall have jurisdiction over any objection or motion relating to a subpoena and authority to punish disobedience of a subpoena in a contempt proceeding.

34.8(5) Counsel for the board or any other person authorized to administer oaths shall have authority to administer an oath or affirmation to a witness.

[Court Order December 12, 1974; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; December 17, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.9 Board action upon report and recommendation of investigator. When the report and recommendation of the investigator is returned to the board, the board shall do one of the following:

34.9(1) Dismiss the complaint, and so notify the complainant and the respondent.

34.9(2) Cause the case to be docketed for consideration by the board at its next hearing-meeting.
[Court Order December 12, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.10 Prior notice of witnesses. If any witness or party is required to give testimony before the board, such person shall be given at least seven days' written notice in advance of the hearing-meeting at which the witness or party is requested to attend and testify.

[Court Order December 12, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.11 Hearing-meetings. Hearing-meetings shall be held at least quarterly and may be held telephonically. A majority of the board shall constitute a quorum. The chair, or the chair's designee, shall see to the preparation of a record of such meetings which shall become a part of the permanent files of the supreme court. Any evidence taken shall be under oath or affirmation and may be made of record. Upon completion of the consideration of any matter before the board, the members, by majority vote of those present, shall do one of the following:

34.11(1) Continue the matter.

34.11(2) Dismiss the complaint and notify the complainant and the respondent.

34.11(3) Admonish the lawyer, who shall be notified in writing that the lawyer has 30 days from the date of mailing thereof to file exceptions with the administrator of the board, who shall then refer the admonition to the board, which may dismiss, admonish, reprimand, or file a formal complaint

with the grievance commission. In cases of admonition, the board shall notify the complainant of the board's opinion concerning the matter and its communication with the lawyer involved.

34.11(4) Reprimand the lawyer and file the reprimand as provided in Iowa Ct. R. 35.3.

34.11(5) File a complaint before the Grievance Commission of the Supreme Court of Iowa and prosecute the complaint to final determination.

[Court Order December 12, 1974; October 20, 1982; February 9, 1983; October 30, 1985, effective November 1, 1985; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 34.12 Order for mental or physical examination or treatment.

34.12(1) *Order requiring examination or treatment.* An attorney who is licensed to practice law in the state of Iowa is, as a condition of licensure, under a duty to submit to a mental or physical examination or subsequent treatment as ordered by the Iowa Supreme Court Attorney Disciplinary Board. The board may order the examination or treatment based upon a showing of probable cause to believe the attorney is suffering from a condition that currently impairs the attorney's ability to discharge professional duties. The board may order that the examination or treatment be at the attorney's expense.

34.12(2) *Show cause hearing.* Before the board may order an attorney to submit to examination or treatment, it shall schedule a hearing to permit the attorney to show cause why the order should not be entered. At least three members of the board shall participate in the hearing. At the hearing, the board's staff counsel shall first present evidence of probable cause supporting the need for evaluation or treatment. The attorney may then respond to the board's showing and rebut the board's claim that the evaluation or treatment is necessary. The hearing shall be informal and rules of evidence shall not be strictly applied. Following the hearing, the board, by majority vote, shall either dismiss the matter or enter an order requiring the examination or treatment.

34.12(3) *Content of order.* The board's order for mental or physical examination or treatment shall include all of the following terms:

- a. A description of the type of examination or treatment to which the attorney must submit.
- b. The name and address of the examiner or treatment facility that the board has identified to perform the examination or provide the treatment.
- c. The time period in which the attorney must schedule the examination or enter treatment.
- d. The amount of time in which the attorney is required to complete the examination or treatment.
- e. A requirement that the attorney cause a report or reports of the examination or treatment results to be provided to the board within a specified period of time.
- f. A requirement that the attorney communicate with the board regarding the status of the examination or treatment.
- g. A provision allowing the attorney to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

34.12(4) *Review.* An attorney who disagrees with the board's order may seek review from the supreme court. The attorney may do so by filing nine copies of a petition for review with the clerk of the supreme court and serving one copy of the petition on the board within seven days after receipt of the board's order. The board may file nine copies and serve one copy of a response to the petition within seven days after service of the petition. The matter shall be promptly set for hearing before one or more justices of the supreme court. The board's order is stayed upon the filing of the petition for review.

34.12(5) *Hearing.* At the hearing on the petition, the board shall present evidence of probable cause supporting its order and the necessity for the evaluation or treatment. The attorney may then respond to the board's showing and rebut the board's claim that the evaluation or treatment is necessary. The hearing shall be informal and rules of evidence shall not be strictly applied. Following the hearing, the court may affirm, vacate, or modify the board's order or may enter such order as the circumstances warrant.

34.12(6) *Failure to submit.* The failure of an attorney to submit to the evaluation or treatment ordered by the board under this rule may be grounds for discipline through the normal disciplinary process.

34.12(7) *"Condition."* For purposes of this rule, "condition" means any physiological, mental or psychological condition, impairment or disorder, including drug or alcohol addiction or abuse.

34.12(8) Confidentiality. All records, papers, proceedings, meetings, and hearings filed or conducted under this rule shall be confidential, unless otherwise ordered by the supreme court. [Court Order April 20, 2005, effective July 1, 2005]

Rule 34.13 Deferral of further proceedings.

34.13(1) Deferral. With the agreement of the board's administrator and the attorney, the board may determine to defer further proceedings pending the attorney's compliance with conditions imposed by the board for supervision of the attorney for a specified period of time not to exceed one year unless extended by the board prior to the conclusion of the specified period. Proceedings may not be deferred under any of the following circumstances:

- a. The conduct under investigation involves misappropriation of funds or property of a client or a third party.
- b. The conduct under investigation involves a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness as a lawyer in other respects.
- c. The conduct under investigation resulted in or is likely to result in actual prejudice (loss of money, legal rights or valuable property rights) to a client or other person, unless restitution is made a condition of deferral.
- d. The attorney has previously been disciplined or has been placed under supervision as provided in this rule.
- e. The attorney has failed to respond to the board's notices of complaint concerning the conduct under investigation.

34.13(2) Conditions. In imposing such conditions, the board shall take into consideration the nature and circumstances of the conduct under investigation by the board and the history, character and condition of the attorney. The conditions may include, but are not limited to, the following:

- a. Periodic reports to the diversion coordinator and the board's administrator.
- b. Supervision of the attorney's practice or accounting procedures.
- c. Satisfactory completion of a course of study.
- d. Successful completion of the Multistate Professional Responsibility Examination.
- e. Compliance with the provisions of the Iowa Rules of Professional Conduct.
- f. Restitution.
- g. Psychological counseling or treatment.
- h. Substance abuse or addiction counseling or treatment.
- i. Abstinence from alcohol or drugs.
- j. Cooperation with the Iowa Lawyers Assistance Program.
- k. Fee arbitration.

34.13(3) Affidavit. Prior to the board's deferral of further proceedings, the attorney shall execute an affidavit setting forth all of the following:

- a. An admission by the attorney of the conduct under investigation by the board.
- b. The conditions to be imposed by the board for supervision of the attorney, including the period of supervision.
- c. The attorney's agreement to the conditions to be imposed.
- d. An acknowledgement that the attorney understands that, should the attorney fail to comply with the conditions imposed by the board, a formal complaint may be filed with the grievance commission, both for the matters raised in the original complaint to the board and for the attorney's failure to cooperate with the conditions of supervision.
- e. A statement that, if the attorney fails to cooperate with the conditions of supervision, the admissions by the attorney with respect to the attorney's conduct may be introduced as evidence in any subsequent proceedings before the grievance commission.
- f. An acknowledgement that the attorney joins in the board's deferral determination freely and voluntarily and understands the nature and consequences of the board's action.

34.13(4) Supervision. The diversion coordinator shall be responsible for supervising the attorney's compliance with the conditions imposed by the board. Where appropriate, the diversion coordinator may recommend to the board modifications of the conditions and shall report to the board the attorney's failure to comply with the conditions or to cooperate with the diversion coordinator.

34.13(5) Compliance. Upon the attorney's successful compliance with the conditions imposed by the board, the board shall dismiss or close the investigations pending before it at the time it determined to defer further proceedings. The attorney will not be considered to have been disciplined,

but the attorney's admission of misconduct may be considered in imposing sanctions in a subsequent disciplinary matter not arising out of the same conduct.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 34.14 Additional board duties.

34.14(1) The board may authorize participation and directory listing by Iowa lawyers in an organization or association of lawyers engaged in a particular area of practice, as provided in Iowa Rule of Professional Conduct 32:7.7(c)(2), and may revoke such authorization at any time for any reasons it deems appropriate. Authorization shall not be granted unless all of the following facts have been established to the satisfaction of the board:

a. All Iowa participants have complied with the requirements of Iowa Rule of Professional Conduct 32:7.4.

b. Participation is based upon meeting stated high standards of professionalism and competence in the area of practice.

c. The organization or association regularly conducts training or professional learning and exchange concerning the area of practice involved.

d. Neither the organization or association nor anyone other than the Iowa lawyer has any part in or share in the conduct or practice of law in the area of practice of law involved and does not participate in any way in fees charged by the Iowa participant.

34.14(2) The board shall approve a reporting form for legal services plans as contemplated by Iowa Rule of Professional Conduct 32:7.7(d)(4)(x). The legal service plan shall be required to report the terms of its plan, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities. If it appears from such annual report or any other source that the organization is not operating in accordance with the rules of the supreme court and the Iowa Rules of Professional Conduct, such facts shall be reported by the board to the court for such action as the supreme court may deem appropriate.

34.14(3) The board may approve organizations through which attorneys can be certified as specialists in particular fields of law.

34.14(4) The board shall retain copies of written solicitations and direct or e-mail communications which attorneys are required to file with the board pursuant to Iowa R. Prof'l Conduct 32:7.3.

[Court Order April 20, 2005, effective July 1, 2005]

Rules 34.15 to 34.22 Reserved.

Rule 34.23 Forms.

Rule 34.23 — Form 1: Iowa Supreme Court Attorney Disciplinary Board Complaint Form.

**THE IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD
Complaint Form**

(Complete a separate form for each attorney about whom you are complaining.)

1. **Your name:** _____ **Email Address:** _____

Street Address: _____

City: _____ **State:** _____ **Zip:** _____

Telephone: Home _____ ; **Cell** _____ ; **Business** _____

2. **Name of attorney** about whom you are complaining: _____

Street Address: _____

City: _____ **State:** _____ **Zip:** _____ **Telephone:** _____

3. Did you hire the attorney (yes or no)? _____ If yes, when did you hire the attorney? _____

If no, what is your connection to the attorney? _____

4. If your complaint is about a lawsuit or court case, answer the following:

a. Name of court (examples: Iowa District Court for Polk County; United States District Court for Northern District of Iowa) _____

b. Case title (examples: Smith vs. Jones; State vs. Doe) _____

c. Case no. _____

5. Type or write neatly on one or more separate sheets of paper a detailed factual statement of what the attorney did or did not do. Return the sheet(s) with this form. **Write on only one side of the complaint form and the additional sheets of paper.** Please attach copies of documents that prove or help to explain your complaint, such as fee agreements, letters, checks, receipts, itemized billings, and court papers. **Send only copies, not original documents, as we are not able to return your documents to you.**

In filing this complaint, you are waiving confidentiality and attorney-client privileges, if any, between you and the attorney named above. This waiver allows the attorney to disclose your confidential information to the extent reasonably necessary to respond to the complaint.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the allegations of this complaint are true and correct.

Date _____ Signature _____

Send the completed form to: Iowa Supreme Court Attorney Disciplinary Board
Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-8017

[Court Order June 23, 1975; March 6, 1987, effective May 1, 1987; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; December 9, 1997; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

CHAPTER 35
ATTORNEY DISCIPLINE, DISABILITY, AND REINSTATEMENT

Rule 35.1	Grievance Commission of the Supreme Court of Iowa
Rule 35.2	Iowa Supreme Court Attorney Disciplinary Board
Rule 35.3	Reprimand
Rule 35.4	Interim suspension for threat of harm
Rule 35.5	Complaints
Rule 35.6	Discovery
Rule 35.7	Hearing
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Rule 35.10	Decision
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Rule 35.12	Appeal
Rule 35.13	Suspension
Rule 35.14	Procedure on application for reinstatement
Rule 35.15	Conviction of a crime
Rule 35.16	Suspension or disbarment on consent
Rule 35.17	Disability suspension
Rule 35.18	Death or suspension of practicing attorney
Rule 35.19	Reciprocal discipline
Rule 35.20	Suspension of attorney's license for failure to comply with a support order
Rule 35.21	Suspension of attorney's license for failure to comply with an obligation owed to or collected by the College Student Aid Commission
Rule 35.22	Suspension of attorney's license for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue
Rule 35.23	Notification of clients and counsel
Rule 35.24	Immunity
Rule 35.25	Reports
Rule 35.26	Effective dates
Rule 35.27	Costs
Rule 35.28	Rules

CHAPTER 35

ATTORNEY DISCIPLINE, DISABILITY, AND REINSTATEMENT

Rule 35.1 Grievance Commission of the Supreme Court of Iowa.

35.1(1) There is hereby created the Grievance Commission of the Supreme Court of Iowa consisting of 15 lawyers from judicial election district 5C, 10 lawyers from judicial election district 5A, and 5 lawyers from each other judicial election district, to be appointed by the supreme court. The court shall designate one of them, annually, as chair of the commission. The supreme court shall accept nominations for appointment to the commission from any association of lawyers which maintains an office within the state of Iowa or any attorney licensed in Iowa. The grievance commission shall also consist of no fewer than 5 nor more than 28 laypersons appointed by the court. Members shall serve no more than two three-year terms, and no member who has served two full terms shall be eligible for reappointment. A member serving as a primary or alternate member of a division of the commission at the time the member's regular term ends shall, nonetheless, continue to serve on that division until the division has concluded its duties with respect to the complaint for which the division was appointed.

35.1(2) The grievance commission shall have an administrative committee consisting of the chair, the director of the office of professional regulation, and a nonlawyer commission member appointed by the court. The administrative committee shall, at least 60 days prior to the start of each fiscal year, submit to the court for consideration and approval a budget covering the commission's operations for the upcoming fiscal year. The grievance commission, or a duly appointed division thereof, shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Rules of Professional Conduct, the laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of the supreme court. The grievance commission, or a duly appointed division thereof, also shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Rules of Professional Conduct by lawyers practicing law in Iowa who are not members of the bar of the supreme court. The grievance commission shall have such other powers and duties as are provided in these rules.

35.1(3) A member appointed to the grievance commission shall not represent, in any stage of the investigative or disciplinary proceedings, any lawyer against whom an ethical complaint has been filed. A member of the grievance commission may represent a lawyer in a malpractice, criminal, or other matter; however, the member must decline representation of the lawyer in any stage of the investigative or disciplinary proceedings and must not participate in any hearing or other proceeding before the commission. These prohibitions extend to lawyers associated in a firm with a member of the commission with respect to those cases in which the member participates or has participated as a member of a division or as an alternate.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; June 24, 1983; December 15, 1994, effective January 3, 1995; July 26, 1995; April 1, 1999; November 9, 2001, effective February 15, 2002; June 28, 2004, effective May 1, 2004; April 20, 2005, effective July 1, 2005; August 6, 2007; December 5, 2007; August 10, 2009]

Rule 35.2 Iowa Supreme Court Attorney Disciplinary Board.

35.2(1) There is hereby created the Iowa Supreme Court Attorney Disciplinary Board. The board shall consist of nine lawyers and three laypersons appointed by the supreme court. The supreme court shall designate one of the lawyers, annually, as chair. The supreme court shall accept nominations for appointment to the board from any association of lawyers which maintains an office within the state of Iowa or any attorney licensed in Iowa. Members shall serve no more than two three-year terms, and no member who has served two full terms shall be eligible for reappointment. The board members are appointed commissioners of the supreme court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Rules of Professional Conduct and laws of the United States or the state of Iowa. Similarly, the members may initiate or receive, and process complaints against any attorney who is not licensed to practice law in this state, but who engages in the practice of law in Iowa, for alleged violations of the Iowa Rules of Professional Conduct. Upon completion of any such investigation, the board shall either dismiss the complaint, admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof. Complaints involving attorneys who are not authorized

to practice law in Iowa may additionally be referred to the commission on the unauthorized practice of law.

35.2(2) A member appointed to the board shall not represent, in any stage of the investigative or disciplinary proceedings, any lawyer against whom an ethical complaint has been filed. To avoid even the appearance of impropriety, a member of the board should not represent any lawyer in any malpractice, criminal, or other matter when it appears that the filing of an ethical complaint against that lawyer is reasonably likely. These prohibitions extend to lawyers associated in a firm with a member of the board.

35.2(3) The assistant director for attorney discipline of the office of professional regulation shall serve as the principal executive officer of the board. Wherever in this chapter a reference to the “assistant director” appears, it shall refer to the assistant director for attorney discipline of the office of professional regulation. The assistant director shall be responsible to the board, to the director of the office of professional regulation, and to the supreme court for proper administration of these rules. Subject to the approval of the supreme court, the board shall employ such other persons as it deems necessary for the proper administration of this chapter. The assistant director and other employees of the board shall receive such compensation and expenses as the supreme court shall fix upon recommendation of the director of the office of professional regulation.

35.2(4) The board shall have an executive committee consisting of the chair, the assistant director, and one nonlawyer member of the board appointed by the court. The executive committee of the board shall, at least 60 days prior to the start of each fiscal year, submit to the court for its consideration and approval a budget covering the operations of the board for the upcoming fiscal year. This budget shall include proposed expenditures for staff, support staff, office space, equipment, supplies and other items necessary to administer the responsibilities of the board as set out in these rules. Approval of the budget by the court shall authorize payment as provided in the budget. A separate bank account designated as the ethics operating account of the disciplinary fund shall be maintained for payment of authorized expenditures as provided in the approved budget. Moneys derived from the annual disciplinary fee set out in Iowa Ct. R. 39.5 shall be deposited in the ethics operating account to the extent authorized each year by the supreme court, for payment of the board’s authorized expenditures. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; October 20, 1982; February 9, 1983; January 22, 1986, effective February 3, 1986; December 15, 1994, effective January 3, 1995; April 1, 1999; November 9, 2001, effective February 15, 2002; June 28, 2004, effective May 1, 2004; April 20, 2005, and June 30, 2005, effective July 1, 2005; December 5, 2007]

Rule 35.3 Reprimand. In the event an attorney is reprimanded by the board, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail, with a notice attached stating that the attorney has 30 days from the date of completed service to file exceptions to the reprimand with the clerk of the grievance commission. Service shall be deemed complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney. If the attorney fails to file an exception, such failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of the supreme court, together with proof of service of the reprimand upon the attorney and a statement that no exceptions were filed within the time prescribed. The supreme court shall then include the reprimand in the records of the court as a public document unless the court remands the matter to the board for consideration of another disposition. In the event, however, the attorney concerned files a timely exception to the reprimand, no report of the reprimand shall be made to the clerk of the supreme court and the reprimand shall be stricken from the records. The board may proceed further by filing a complaint against such attorney before the grievance commission. When an exception to a reprimand has been filed, such reprimand shall not be admissible in evidence in any hearing before the grievance commission.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; June 15, 1983; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 35.4 Interim suspension for threat of harm.

35.4(1) Upon receipt of evidence demonstrating probable cause that a lawyer subject to the disciplinary jurisdiction of the supreme court has committed a violation of the Iowa Rules of Professional Conduct that poses a substantial threat of serious harm to the public, the board shall do all of the following:

a. Transmit the evidence along with a verified petition for interim suspension pending formal disciplinary proceedings to the court. The petition shall state with particularity the disciplinary rules alleged to have been violated by the lawyer and the exact nature of the threat of serious harm to the public.

b. Promptly notify the lawyer by any reasonable means that a petition has been filed, followed by service of the petition.

35.4(2) Upon receipt of the petition and evidence, the court shall determine whether the board has established, by a convincing preponderance of the evidence, that a disciplinary violation posing a substantial threat of serious harm to the public exists. If such a disciplinary violation is established, the court may enter an order immediately suspending the lawyer pending final disposition of a disciplinary proceeding predicated upon such conduct or may order such other action as it deems appropriate. The order may provide that any further proceedings based on the lawyer's conduct be expedited. If a suspension order is entered, the court may direct the chief judge of the judicial district in which the lawyer practiced to appoint a trustee under rule 35.17.

35.4(3) A lawyer suspended pursuant to this rule may file a petition to dissolve or modify the interim suspension order. The lawyer must serve the petition on the board's counsel and the chief judge of the judicial district in which the lawyer practiced. The court shall promptly schedule the matter for hearing before one or more justices. The hearing shall be set for a date no sooner than seven days after the petition is filed unless both parties and the court agree to an earlier date. At the hearing, the lawyer shall bear the burden of demonstrating that the suspension order should be dissolved or modified.

[Court Order April 9, 2003; April 20, 2005, effective July 1, 2005]

Rule 35.5 Complaints. Every complaint filed against an attorney with the grievance commission shall be signed and sworn to by the chair of the board and served upon the attorney concerned as provided by the rules of the grievance commission. Such complaints shall be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct alleged to have been committed. All complaints, motions, pleadings, records, reports, exhibits, evidence and other documents or things filed under this chapter or received in evidence in a hearing before the grievance commission shall be filed with and preserved by the clerk of the grievance commission in Des Moines, Iowa, and shall at all times be available to the supreme court or anyone designated by the court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 35.6 Discovery. In any disciplinary proceeding or action taken by the board, discovery shall be permitted as provided in Iowa Rs. Civ. P. 1.501 to 1.517, 1.701, 1.702, and 1.714 to 1.717. The attorney against whom a complaint has been filed, in addition to the restriction stated in Iowa R. Civ. P. 1.503(1), shall not be required to answer an interrogatory pursuant to Iowa R. Civ. P. 1.509, a request for admission pursuant to Iowa R. Civ. P. 1.510, a question upon oral examination pursuant to Iowa R. Civ. P. 1.701, or a question upon written interrogatories pursuant to Iowa R. Civ. P. 1.710, if the answer would be self-incriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in Iowa Rs. Civ. P. 1.721 to 1.728. If either party is to utilize discovery, it must be commenced within 30 days after service of the complaint. The commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice thereof and a reasonable time to prepare a defense thereto prior to the date set for hearing. The grievance commission, or any division thereof, shall receive an application and may enter an order to enforce discovery or to perpetuate any evidence. Discovery pursuant to this rule includes an attorney's right to obtain a copy of the board's file pursuant to the provisions of Iowa Ct. R. 34.4(2). [Court Order June 10, 1964; October 8, 1970; November 8, 1974; March 15, 1983; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 35.7 Hearing.

35.7(1) Upon the expiration of 30 days from the date of service of the complaint, the grievance commission shall immediately set the matter for hearing and notify the parties by restricted certified mail or personal service. Such notice shall be provided at least ten days prior to the scheduled hearing date.

After the complaint is served and a division of the grievance commission is appointed to hear the matter, the clerk of the grievance commission shall arrange a telephone conference with members of the division and the parties to schedule the hearing. Notice of the hearing shall be provided at least ten days prior to the scheduled hearing. If a party does not participate in the scheduling conference, notice of the hearing shall be by restricted certified mail or personal service.

The hearing shall be held not less than 60 days nor more than 90 days after the service of the complaint. The commission may grant reasonable continuances upon written application supported by affidavit. Proceedings, hearings, and papers filed before the grievance commission or any division thereof shall be confidential, subject to disclosure under Iowa Ct. R. 36.18.

35.7(2) In the event an attorney previously has been publicly reprimanded or an attorney's license has been suspended or revoked or the attorney has been disbarred, a certified copy of said action shall be admitted into evidence at any hearing involving disciplinary proceedings without the necessity of a bifurcated hearing. The grievance commission and the supreme court shall consider this evidence along with all other evidence in the case in determining the attorney's fitness to practice law in the state of Iowa.

35.7(3) Principles of issue preclusion may be used by either party in a lawyer disciplinary case if all of the following conditions exist:

a. The issue has been resolved in a civil proceeding that resulted in a final judgment, or in a criminal proceeding that resulted in a finding of guilt, even if the Iowa Supreme Court Attorney Disciplinary Board was not a party to the prior proceeding.

b. The burden of proof in the prior proceeding was greater than a mere preponderance of the evidence.

c. The party seeking preclusive effect has given written notice to the opposing party, not less than ten days prior to the hearing, of the party's intention to invoke issue preclusion.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 30, 1981; August 27, 1982; September 27, 1984, effective October 10, 1984; October 25, 1993, effective January 3, 1994; December 15, 1994, effective January 3, 1995; May 23, 2001; November 9, 2001, effective February 15, 2002; December 17, 2002; April 20, 2005, effective July 1, 2005]

Rule 35.8 Subpoenas. The commission shall have subpoena power on behalf of the board and the attorney against whom a complaint has been filed to compel the appearance of persons or the production of documents during discovery and the final hearing. Any attack on the validity of a subpoena shall be heard or determined by the chair of the commission, the president, or any member of a division to which a complaint has been referred. Any resulting order is not appealable prior to entry of the final ruling, report, or recommendation of the commission. Disobedience of the commission's subpoena shall be punishable as contempt in the district court for the county where the hearing is to be held. A contempt proceeding will not be a matter of public record. The clerk of the grievance commission must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it for service. An attorney licensed or otherwise authorized to practice law in Iowa also may issue and sign a subpoena as an officer of the court. Any member of the grievance commission is hereby empowered to administer oaths or affirmations to all witnesses and shall cause such testimony to be officially reported by a court reporter.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.9 Stipulated submissions. The parties may stipulate and agree to waive formal hearing and submit the complaint to the commission for its decision on the basis of a written stipulation approved by the parties and filed with the clerk of the commission. The commission may consider the complaint on the basis of the stipulation, or refuse to accept the stipulation and proceed with a formal hearing, or accept the stipulation but conduct a limited hearing to elicit such additional evidence as the commission may deem necessary to facilitate informed consideration of the complaint. A stipulation under this rule must be submitted not less than 15 days before the date set for hearing. A stipulation submitted pursuant to this rule may include a statement regarding the proposed discipline, including

additional or alternative sanctions as provided in rule 35.10. The commission must consider the statement of proposed discipline, but is not limited by the statement and may recommend greater or lesser discipline, including additional or alternative sanctions. A stipulation submitted pursuant to this rule must include:

1. A statement of the relevant facts;
2. A separate statement of conclusions of law as to the stipulated violations;
3. A separate description of mitigating and aggravating circumstances;
4. A stipulation as to all exhibits; and
5. A waiver of the formal hearing, the parties' agreement to submit the matter on the basis of the stipulation, and an agreement to closure of the record unless the commission directs further proceedings.

[Court Order February 20, 2012]

Rule 35.10 Decision. At the conclusion of a hearing upon any complaint against an attorney, the grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The commission shall dismiss the complaint, issue a private admonition, or recommend to the supreme court that the attorney be reprimanded or the attorney's license to practice law be suspended or revoked. If the grievance commission recommends a reprimand or suspension or revocation of the attorney's license, it shall file with the supreme court its written findings of fact, conclusions of law, and recommendations. As part of its report, the commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline.

A copy of the commission's report shall be filed with the Client Security Commission. The disposition or report of the grievance commission shall be made or filed with the supreme court within 60 days of the date set for the filing of the last responsive brief and argument. If the commission cannot reasonably make its determination or file its report within such time limit, the division president may file a request for an extension of time with the clerk of the commission prior to the expiration of the applicable 60-day period. The clerk shall serve a copy of the request on the chair of the commission and the parties. The chair of the commission shall file a written decision on the extension request with the clerk, who shall serve a copy on all parties. If the division fails to file its decision or a request for an extension of time within 60 days of the date set for the filing of the last responsive brief and argument, the clerk shall promptly notify the director of the office of professional regulation of the failure. Any determination or report of the commission need only be concurred in by a majority of the commissioners sitting. Any commissioner has the right to file with the supreme court a dissent from the majority determination or report. Such matter shall then stand for final disposition in the supreme court. If the grievance commission dismisses the complaint or issues a private admonition, no report shall be made to the supreme court, except as provided in rule 35.25; however, the grievance commission shall, within 10 days of its determination, serve a copy of its determination or report on the complainant and the attorney concerned as provided in chapter 36 of the Iowa Court Rules. If no appeal is applied for by the complainant within 10 days after such service, the grievance commission's determination shall be final. Any report of reprimand or recommendations for license suspension or revocation shall be a public document upon its filing with the clerk of the supreme court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 17, 1984; September 26, 1984, effective October 10, 1984; October 25, 1985, effective November 1, 1985; March 9, 1994, effective April 1, 1994; November 9, 2001, effective February 15, 2002; August 28, 2003; April 20, 2005, and July 1, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.11 Supreme court disposition.

35.11(1) Any report filed by the grievance commission with the supreme court shall be served upon the complainant and the attorney concerned as provided by chapter 36 of the Iowa Court Rules. Such report shall be entitled in the name of the complainant versus the accused attorney as the respondent. Within 14 days after a report is filed with the clerk of the supreme court, the clerk of the grievance commission shall transmit to the clerk of the supreme court the entire record made before the commission. If no appeal is taken or application for permission to appeal is filed within the 10-day period provided in rule 35.12, the supreme court shall set a date for submission of the

commission report. The supreme court shall notify the parties that they may file written statements with the supreme court in support of or in opposition to the discipline the grievance commission recommended. Statements in support of or opposition to the recommended discipline shall be served and filed no later than seven days before the date set for submission. Upon submission, the supreme court shall proceed to review de novo the record made before the commission and determine the matter without oral argument or further notice to the parties. Upon such review de novo the supreme court may impose a lesser or greater sanction than the discipline recommended by the grievance commission.

35.11(2) The supreme court may revoke or suspend the license of an attorney admitted to practice in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Rules of Professional Conduct, or any cause now or hereafter provided by statute or these rules.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1975; July 18, 1983; July 1, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.12 Appeal.

35.12(1) The respondent may appeal from the report or recommendation filed by the grievance commission pursuant to rule 35.10 to the supreme court. The respondent's notice of appeal must be filed with the clerk of the grievance commission within ten days after service of the report or recommendation on the respondent. The respondent shall serve a copy of the notice of appeal on the complainant or its counsel pursuant to Iowa R. App. P. 6.701. Promptly after filing the notice of appeal with the clerk of the grievance commission, the respondent shall mail or deliver a copy of the notice to the clerk of the supreme court.

35.12(2) The complainant may apply to the supreme court for permission to appeal from a determination, ruling, report, or recommendation of the grievance commission. The application shall be filed within ten days after service of the determination, ruling, report, or recommendation on the complainant. The supreme court may grant such appeal in a manner similar to the granting of interlocutory appeals in civil cases under the Iowa Rules of Appellate Procedure. The filing fee and the docket fee shall be waived upon the complainant's written request.

35.12(3) An appeal of the grievance commission's dismissal of a complaint or of the grievance commission's decision to issue a private admonition shall remain confidential. In making such application, and in any subsequent briefs, the complainant shall refer to the respondent as "Attorney Doe No. (insert grievance commission number)," instead of using the respondent's name. All references to the respondent during oral arguments shall be to "Attorney Doe." In the event the supreme court reverses or modifies the report of the grievance commission, such court order of reversal or modification shall become a public record.

35.12(4) After a notice of appeal is filed or permission to appeal is granted, the appeal shall proceed pursuant to the Iowa Rules of Appellate Procedure to the full extent those rules are not inconsistent with this rule. Within seven days of the filing of the notice of appeal or the filing of the order granting permission to appeal, appellant shall pay the filing fee pursuant to Iowa R. App. P. 6.702 and shall file the combined certificate Iowa R. App. P. 6.804 requires. The matter shall be captioned under the title given to the action before the grievance commission with the appellant identified as such pursuant to Iowa R. App. P. 6.109(2) unless otherwise required by rule 35.12(3). The abbreviated time limits specified in Iowa R. App. P. 6.902 shall apply. Extensions of time shall not be granted except upon a verified showing of the most unusual and compelling circumstances. Review shall be de novo. If a respondent's appeal is dismissed for lack of prosecution pursuant to Iowa R. App. P. 6.1202 or for any other reason, the supreme court shall proceed to review and decide the matter pursuant to rule 35.11 as if no appeal had been taken.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 18, 1983; August 14 and 24, 1987, effective September 1, 1987; March 9, 1994, effective April 1, 1994; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 27, 2008; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.13 Suspension.

35.13(1) In the event the supreme court suspends an attorney's license to practice law, such suspension shall continue for the minimum time specified in such order and until the supreme court has approved the attorney's written application for reinstatement. In the order of suspension or by

order at any time before reinstatement, the supreme court may require the suspended attorney to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

35.13(2) An attorney whose license has been suspended for a period not exceeding 60 days shall not be required to file an application for reinstatement, and the court shall order reinstatement of the attorney's license on the day after the suspension period has expired, subject to the following exceptions. The Iowa Supreme Court Attorney Disciplinary Board may file and serve within the suspension period an objection to the automatic reinstatement of the attorney. The filing of an objection shall stay the automatic reinstatement until ordered otherwise by the court. If the board files an objection, the court shall set the matter for hearing and the clerk shall enter written notice in conformance with rule 35.14, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date. Automatic reinstatement shall not be ordered until all costs assessed under rule 35.27 have been paid.

35.13(3) Any attorney suspended shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

35.13(4) Nothing in this rule shall preclude an attorney, law firm, or professional association from employing a suspended attorney to perform such services only as may be ethically performed by laypersons employed in attorneys' offices, under all of the following conditions:

a. Notice of employment, together with a full job description, shall be provided to the board before employment commences.

b. Informational reports, verified by the employer and employee, shall be submitted quarterly to the board. Such reports shall contain a certification that no aspect of the employee's work has involved the unauthorized practice of law.

c. A suspended attorney shall not have direct or personal association with any client and shall not disburse or otherwise handle funds or property of a client.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; April 25, 1985; October 25, 1985, effective November 1, 1985; December 15, 1994, effective January 3, 1995; April 2, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.14 Procedure on application for reinstatement. Any person whose certificate to practice law in this state was suspended may apply for reinstatement subject to the following rules:

35.14(1) Application.

a. A proceeding for reinstatement to the practice of law in Iowa must be commenced by a written application to the supreme court filed with the clerk of the supreme court not more than 60 days prior to expiration of the suspension period.

b. The application shall state the date of the applicant's original admission, the date and duration of suspension, and that the applicant has complied in all respects with the orders and judgment of the supreme court relating to the suspension.

c. The application shall be verified by the oath of the applicant as to the truth of the statements made in the application.

d. The applicant shall also submit to the supreme court satisfactory proof that the applicant, at the time of the application, is of good moral character and in all respects worthy of the right to practice law. The application shall be accompanied by the recommendation of at least three reputable attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the suspension, the applicant shall also file a recommendation from three reputable attorneys currently practicing law in the district where the applicant resided at the time of suspension. The required recommendations shall not be from judges or magistrates.

e. The applicant shall also submit satisfactory proof that the applicant, at the time of the application, has filed all reports, paid all fees, and completed all continuing legal education required by the provisions of chapters 39, 41, and 42 of the Iowa Court Rules.

35.14(2) Procedure. Upon filing of such application and recommendations with the clerk of the supreme court, the clerk shall give written notice thereof to all of the following:

a. The attorney general.

- b. The county attorney where the applicant resides.
- c. The county attorney where the applicant resided at the time of suspension.
- d. The chair of the Iowa Board of Law Examiners.
- e. The assistant director for attorney discipline of the office of professional regulation.
- f. Each judge of the district in which the applicant resided at the time of suspension.
- g. The president of a local bar association where the applicant resides.
- h. The president of a local bar association where the applicant resided when the certificate was suspended.
- i. The president of the Iowa State Bar Association.

35.14(3) *Written statements.* Such persons, after receipt of the notice and before the date fixed for hearing, may submit to the clerk of the supreme court written statements of fact and comments regarding the current fitness of the applicant to practice law. Such notice shall contain the date of the suspension, the date of filing the application, and the date of hearing thereon fixed by the supreme court, which shall in no case be less than 60 days after the filing of such application for reinstatement.

35.14(4) *Notices of witnesses and exhibits.* At least 14 days prior to the scheduled hearing date, the applicant and the Iowa Supreme Court Attorney Disciplinary Board shall provide notice to the court and the opposing party of the names and expected testimony of any witnesses they intend to produce and shall file and serve copies of any exhibits they intend to introduce at the hearing. The opposing party may provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. The court shall waive these deadlines only upon good cause shown.

35.14(5) *Hearing.* The reinstatement hearing shall be held at the time and place designated by the court. The applicant shall bear the burden of demonstrating that the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of suspension. The hearing shall be public unless the court orders otherwise upon motion of a party. The hearing shall be informal and the strict rules of evidence shall not apply. The court may impose reasonable time limits on the length of the hearing.

35.14(6) *Decision.* The court shall render its decision as soon as practicable after the hearing. The supreme court may require the person to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

35.14(7) *Denial of reinstatement for failure to comply with a support order.* An attorney who fails to comply with a support order may be denied reinstatement of the attorney's license to practice law in Iowa.

a. Procedure. The Child Support Recovery Unit (CSRU) shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. The procedure, including notice to the attorney, shall be governed by rule 35.20(1), except that the notice shall refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by rule 35.20(2).

c. Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

d. Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the clerk of the supreme court and the director of the office of professional regulation are authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify licensees subject to enforcement under Iowa Code chapter 252J or 598.

35.14(8) *Denial of reinstatement for default on student loan obligation.* An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission may be denied reinstatement of the attorney's license to practice law in Iowa.

a. Procedure. The College Student Aid Commission shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. The procedure, including notice to the attorney, shall be governed by rule 35.21(1), except that the notice shall refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by rule 35.21(2).

c. Noncompliance certificate withdrawn. If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

35.14(9) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* An attorney who defaults on an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue (CCU) may be denied reinstatement of the attorney's license to practice law in Iowa.

a. Procedure. The CCU shall file any certificate of noncompliance which involves an attorney with the clerk of the supreme court. The procedure, including notice to the attorney, shall be governed by rule 35.22(1), except that the notice shall refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

b. District court hearing. Upon receipt of an application for hearing by the attorney, the clerk of the district court shall schedule a hearing to be held within 30 days of the date of filing of the application. All matters pertaining to the hearing shall be governed by rule 35.22(2).

c. Noncompliance certificate withdrawn. If a withdrawal of a certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; June 5, 1996, effective July 1, 1996; December 20, 1996; November 25, 1998; December 17, 1998; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; April 25, 2008; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.15 Conviction of a crime.

35.15(1) Upon receipt by the supreme court of satisfactory evidence that an attorney had pled guilty or nolo contendere to, or has been convicted of, a crime which would be grounds for license suspension or revocation, such attorney may be temporarily suspended from the practice of law by the supreme court regardless of the pendency of an appeal. Not less than 20 days prior to the effective date of such suspension, the attorney concerned shall be notified, in writing directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and at a designated place to show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time.

35.15(2) Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

35.15(3) For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as provided above upon application by such attorney and a hearing in accordance with rule 35.14, but such reinstatement shall neither terminate a pending disciplinary proceeding nor bar later proceedings against the attorney.

35.15(4) An attorney temporarily suspended under the provisions of this rule shall be promptly reinstated upon the filing of sufficient evidence disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement shall neither terminate a pending disciplinary proceeding nor bar later proceedings against the attorney.

35.15(5) The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of, a crime as set forth above shall, within ten days, transmit a certified record of the proceedings to the clerk of the supreme court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; April 25, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.16 Suspension or disbarment on consent.

35.16(1) An attorney subject to investigation or a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to suspension or disbarment, but only by delivering to the grievance commission an affidavit stating the attorney consents to suspension of not more than a specific duration or disbarment and indicating the following:

a. The consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implications attendant upon such consent.

b. The attorney is aware of a pending investigation or proceeding involving allegations that there exist grounds for discipline, the nature of which shall be specifically set forth.

c. The attorney acknowledges the material facts so alleged are true.

d. In the event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, the attorney could not successfully defend against same.

e. The facts admitted in the affidavit would probably result in the suspension or revocation of the attorney's license to practice law.

f. Any matters in mitigation or aggravation.

g. Consent to any alternative or additional sanctions as provided in rule 35.10.

35.16(2) The Iowa Supreme Court Attorney Disciplinary Board shall file a response to the affidavit, indicating whether it believes the misconduct admitted in the affidavit would probably result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

35.16(3) Upon receipt of such affidavit and response, the grievance commission shall cause the same to be filed with the clerk of the supreme court. The supreme court shall enter an order suspending the attorney's license to practice law for a period no greater than the stipulated duration, or disbarring the attorney on consent, unless it determines the misconduct admitted in the affidavit is insufficient to support the discipline to which the attorney has consented. The court may also order any of the alternative or additional sanctions to which the respondent has consented. If the court determines the affidavit does not set forth facts that support imposition of the discipline to which the attorney has consented, it may either enter an order allowing the parties to supplement the affidavit or an order declining to accept the affidavit. An order declining to accept the affidavit shall not bar further disciplinary proceedings against the attorney, nor shall it preclude the court from imposing any sanction warranted by the attorney's conduct upon review of a grievance commission determination.

35.16(4) Any order suspending or disbarring an attorney on consent shall be a matter of public record. If an order of suspension or disbarment is entered, the affidavit and response shall be publicly disclosed.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 26, 2004; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.17 Disability suspension.

35.17(1) In the event an attorney shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or an alcoholic, or a drug addict, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within 10 days, certify same to the clerk of the supreme court.

35.17(2) Upon the filing of any such certificate or a like certificate from another jurisdiction or upon determination by the supreme court pursuant to a sworn application on behalf of a local bar association or the Iowa Supreme Court Attorney Disciplinary Board that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of such suspension, the attorney or the attorney's guardian and the director of the institution or hospital to which the

attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action above referred to. Any hearing shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order shall be given to the suspended attorney, or to the attorney's guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

35.17(3) Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112 or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of professional responsibilities of an attorney. The suspension shall be effective until further order of the court. A copy of such suspension order shall be given to the suspended attorney, or to the attorney's guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

35.17(4) Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

35.17(5) No attorney suspended due to disability under this rule may engage in the practice of law in this state until reinstated by order of the supreme court.

35.17(6) Upon being notified of the suspension of the attorney, the chief judge in the judicial district in which the attorney practiced shall appoint an attorney or attorneys to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment shall be subject to supreme court confirmation. The appointed attorney shall serve as a special member of the Iowa Supreme Court Attorney Disciplinary Board and as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee shall not serve as an attorney for the clients of the disabled attorney and other affected persons. Neither shall the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee shall, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When the suspended attorney is reinstated to practice law in this state, or all pending representation of clients has been completed, or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

35.17(7) Any attorney so suspended shall be entitled to apply for reinstatement to active status once each year or at such shorter intervals as the supreme court may provide. An attorney suspended due to disability may be reinstated by the supreme court upon a showing, by clear and convincing evidence, that the attorney's disability has been removed and the attorney is fully qualified to resume the practice of law. Upon the attorney's filing of an application for reinstatement, the supreme court may take or direct any action deemed necessary or proper to determine whether such suspended attorney's disability has been removed, including an examination of the applicant by such qualified medical experts as the supreme court shall designate. In its discretion the supreme court may direct that the expenses of such an examination be paid by the attorney.

35.17(8) The filing of an application for reinstatement to active status by an attorney suspended due to disability shall constitute a waiver of any doctor-patient privilege with regard to any treatment of the attorney during the period of the disability. The attorney shall also set forth in the application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other institution by whom or in which the petitioning attorney has been examined or treated since the disability suspension and shall also furnish to the supreme court written consent that any such psychiatrist, psychologist, physician and hospital or other institution may divulge any information and records requested by the supreme court or any court-appointed medical experts.

35.17(9) When an attorney has been suspended due to disability and thereafter the attorney is judicially held to be competent or cured, the supreme court may dispense with further evidence regarding removal of the disability and may order reinstatement to active status upon such terms as are deemed reasonable.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 21, 1977; March 30, 1982; November 14, 1984, effective November 26, 1984; April 25, 1985; July 31, 1990, effective September 4, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, and July 1, 2005, effective July 1, 2005; October 12, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.18 Death or suspension of practicing attorney. Upon a sworn application on behalf of a local bar association or the Iowa Supreme Court Attorney Disciplinary Board showing that a practicing attorney has died or been suspended or disbarred from the practice of law and a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced shall appoint an attorney to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment shall be subject to confirmation by the supreme court. The appointed lawyer shall serve as a special member of the Iowa Supreme Court Attorney Disciplinary Board as a commissioner of the supreme court for the purposes of the appointment. While acting as a trustee, the trustee shall not serve as an attorney for the clients of the disabled attorney and other affected persons. Neither shall the trustee examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee shall, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When all pending representation of clients has been completed or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; March 30, 1982; May 19, 1982; July 31, 1990, effective September 4, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, and July 1, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.19 Reciprocal discipline.

35.19(1) Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, shall promptly advise the Iowa Supreme Court Attorney Disciplinary Board, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the board shall obtain a certified copy of such disciplinary order and file it in the office of the clerk of the supreme court.

35.19(2) Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, the supreme court shall promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: a copy of the disciplinary order from the other jurisdiction or federal court, and an order directing that such disciplined attorney file in the supreme court, within 30 days after receipt of the notice, any objection that imposition of identical discipline in this state would be too severe or otherwise unwarranted, giving specific reasons. A like notice shall be sent, by ordinary mail, to the board, which shall have the right to object on the ground that the imposition of identical

discipline in this state would be too lenient or otherwise unwarranted. If either party so objects, the matter shall be set for hearing before three or more justices of the supreme court and the parties notified by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court shall be admitted into evidence as well as any findings of fact, conclusions of law, decision and orders. Any such findings of fact shall be conclusive and not subject to readjudication. Thereafter, the supreme court shall enter such findings, conclusions and orders that it deems appropriate.

35.19(3) If neither party objects within 30 days from service of the notice, the supreme court may impose the identical discipline, unless the court finds that on the face of the record upon which the discipline is predicated it clearly appears that any of the following exist:

a. The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.

b. There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that the supreme court could not, conscientiously, accept as final the conclusion on that subject.

c. The misconduct established warrants substantially different discipline in this state.

35.19(4) If the supreme court determines that any such factors exist, it may enter an appropriate order. Rule 35.14 shall apply to any subsequent reinstatement or reduction or stay of discipline.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 35.20 Suspension of attorney's license for failure to comply with a support order. An attorney who fails to comply with a support order may be subject to a suspension of the attorney's license to practice law in Iowa.

35.20(1) Procedure. The Child Support Recovery Unit (CSRU) shall file any certificate of noncompliance with a support order which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court shall issue a notice to the attorney. The following rules shall apply and shall be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CSRU to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county in which the underlying support order is filed.

c. The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice, and copies of the application must be provided to the CSRU and the office of professional regulation of the supreme court by regular mail.

d. The filing of the application shall automatically stay the supreme court's action on the certificate of noncompliance.

e. The provisions of this rule shall prevail over those of any other statute or rule to the extent they may conflict.

35.20(2) District court hearing.

a. Upon receipt of an application for hearing by the attorney, the clerk of the district court shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk shall mail copies of the order setting hearing to the obligor, the CSRU, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court shall receive a certified copy of the CSRU's written decision and certificate of noncompliance from the CSRU and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance shall be lifted.

d. The district court's scope of review shall be limited to determining if there has been a mistake of fact relating to the attorney's support delinquency. The court shall not consider visitation or custody issues, and shall not modify the support order.

e. If the district court concludes the CSRU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of certificate of noncompliance, the court shall order the CSRU to file

a withdrawal of certificate of noncompliance with the office of professional regulation of the supreme court.

35.20(3) *Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

35.20(4) *Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the office of professional regulation of the supreme court is authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify licensees subject to enforcement under Iowa Code chapter 252J or 598. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; December 20, 1996; November 9, 2001, effective February 15, 2002; June 5, 2008, effective July 1, 2008; July 27, 2009; February 20, 2012]

Rule 35.21 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the College Student Aid Commission. An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission (commission) may be subject to a suspension of the attorney's license to practice law in Iowa.

35.21(1) *Procedure.* The commission shall file any certificate of noncompliance which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court shall issue a notice to the attorney. The following rules shall apply and shall be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the commission to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the commission to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the attorney's county of residence.

d. The application for hearing must be filed with the district court clerk within 30 days of the date of issuance of the notice, and copies of the application must be provided to the commission and the office of professional regulation of the supreme court by regular mail.

e. The filing of the application shall automatically stay the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule shall prevail over those of any other statute or rule to the extent they may conflict.

35.21(2) *District court hearing.*

a. Upon receipt of an application for hearing by the attorney, the clerk of district court shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk shall mail copies of the order setting hearing to the attorney, the commission, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court shall receive a certified copy of the commission's written decision and certificate of noncompliance from the commission and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance shall be lifted.

d. The district court's scope of review shall be limited to determining if there has been a mistake of fact relating to the attorney's delinquency.

e. If the district court concludes the commission erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court shall order the commission to file a withdrawal of the certificate of noncompliance with the office of professional regulation of the supreme court.

35.21(3) *Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance

or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 25, 1998; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; July 27, 2009; February 20, 2012]

Rule 35.22 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.

35.22(1) Procedure. The Centralized Collection Unit of the Department of Revenue (CCU) shall file any certificate of noncompliance which involves an attorney with the supreme court by filing the certificate with the office of professional regulation of the supreme court at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court shall issue a notice to the attorney. The following rules shall apply and shall be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CCU to file a withdrawal of the certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county where the majority of the liability was incurred.

d. The application for hearing must be filed with the clerk of the district court within 30 days of the date of issuance of the notice, and copies of the application must be provided to the CCU and the office of professional regulation of the supreme court by regular mail.

e. The filing of the application shall automatically stay the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule shall prevail over those of any other statute or rule to the extent they may conflict.

35.22(2) District court hearing.

a. Upon receipt of an application for hearing by the attorney, the clerk of the district court shall schedule a hearing to be held within 30 days of the date of filing of the application. The clerk shall mail copies of the order setting hearing to the attorney, the CCU, and the office of professional regulation of the supreme court.

b. Prior to the hearing, the district court shall receive a certified copy of the CCU's written decision and certificate of noncompliance from the CCU and a certified copy of the notice from the office of professional regulation of the supreme court.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance shall be lifted.

d. The district court's scope of review shall be limited to demonstration of the amount of the liability owed or the identity of the person.

e. If the district court concludes the CCU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court shall order the CCU to file a withdrawal of the certificate of noncompliance with the office of professional regulation of the supreme court.

35.22(3) Noncompliance certificate withdrawn. If a withdrawal of the certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court.

35.22(4) Sharing information. Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the office of professional regulation of the supreme court is authorized to share information with the CCU for the sole purpose of allowing the CCU to identify licensees subject to enforcement under Iowa Code chapter 272D.

[Court Order June 5, 2008, effective July 1, 2008; July 27, 2009; February 20, 2012]

Rule 35.23 Notification of clients and counsel.

35.23(1) In every case in which a respondent is ordered to be disbarred or suspended, the respondent shall do all of the following:

- a. Within 15 days notify in writing the respondent's clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney.
- b. Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.
- c. Within 30 days refund any part of any fees paid in advance that have not been earned.
- d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel the adverse parties, of the respondent's disbarment or suspension and consequent disqualification to act as an attorney after the effective date of such discipline or transfer to disability inactive status.
- e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.
- f. Keep and maintain records of the steps taken to accomplish the foregoing.
- g. Within 30 days file with the Iowa Supreme Court Attorney Disciplinary Board copies of the notices sent pursuant to the requirements of this rule and proof of complete performance of the requirements, and this shall be a condition for application for readmission to practice.

35.23(2) The times set forth in 35.23(1)(c) and 35.23(1)(g) of this rule shall be reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 35.13. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1979; April 14, 1989, effective May 15, 1989; December 15, 1994, effective January 3, 1995; April 2, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.24 Immunity.

35.24(1) Complaints submitted to the grievance commission or the disciplinary board, or testimony with respect thereto, shall be privileged and no lawsuit predicated thereon may be instituted.

35.24(2) Claims against members of the grievance commission, the disciplinary board, and the director, assistant directors, and the staff of the office of professional regulation are subject to the Iowa Tort Claims Act set forth in Iowa Code chapter 669.

35.24(3) A true copy of any complaint against a member of the grievance commission or the disciplinary board involving alleged violations of an attorney's oath of office or of the Iowa Rules of Professional Conduct and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of the supreme court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 31, 1987, effective September 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.25 Reports. The chair of the grievance commission and the chair of the disciplinary board shall, on February 1 of each year, submit to the supreme court a consolidated report of the number of complaints received and processed during the prior calendar year, a synopsis of each such complaint, and the disposition thereof. The name of the attorney charged and the name of the complainant shall be omitted, but a synopsis of the charges made and a report of disposition shall be included.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; October 16, 1987, effective December 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.26 Effective dates. These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 9, 2001, effective February 15, 2002; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.27 Costs.

35.27(1) In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the supreme court shall assess against the respondent attorney the costs of the proceeding. For the purposes of this rule, costs shall include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

35.27(2) Within 30 days of the filing of the commission report, the commission shall serve the complainant and the respondent with a bill of costs and file the bill with the clerk of the supreme court. An appeal does not obviate this requirement. The complainant and the respondent shall have ten days from the date of service to file written objections with the supreme court and the clerk of the grievance commission. Any objections filed shall be considered by the president of the grievance commission division or the president's designee. The president or the designee shall rule on the objections within ten days. The ruling and objections shall be considered by the supreme court upon disposition of the matter under rule 35.11 or 35.12. Additional costs associated with an appeal shall be taxed by the clerk as in other civil actions.

35.27(3) In its final decision, the supreme court shall order the respondent to pay restitution to the complainant for such costs as the supreme court may approve. A suspended or disbarred attorney may not file an application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule has been fully paid, or waived by the supreme court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; September 15, 1986, effective October 1, 1986; March 27, 1990, effective May 1, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; May 30, 2007; June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 35.28 Rules. The grievance commission and the disciplinary board shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to supreme court approval.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005; June 5, 2008, effective July 1, 2008; February 20, 2012]

CHAPTER 36
RULES OF THE GRIEVANCE COMMISSION

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CHAPTER 36

RULES OF THE GRIEVANCE COMMISSION

Rule 36.1 Grievance commission — clerk. The Grievance Commission of the Supreme Court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The assistant director for boards and commissions of the office of professional regulation shall serve as clerk for the grievance commission. The director of the office of professional regulation shall designate an assistant clerk for the grievance commission. In the chair's absence or inability to act, the vice chair shall perform all duties of the chair. *See* Iowa Ct. R. 35.1.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007]

Rule 36.2 Grievance commission — divisions. The commissioners may act as a body or in such divisions as the chair may direct. Each division shall consist of five members. The personnel of each division shall be selected and designated by the chair for each complaint as required. The chair shall appoint one of said members to serve as president of said division. One additional member shall be selected as an alternate.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002]

Rule 36.3 Complaints — Iowa Supreme Court Attorney Disciplinary Board. Any complaint filed by the Iowa Supreme Court Attorney Disciplinary Board shall be filed in the name of the board as the complainant and against the attorney named in said charges as the respondent. The complaint and charges shall be prosecuted by the board before the commission until final disposition.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.4 Complaints — filing — docketing. The clerk shall cause each complaint to be separately numbered and filed; and all subsequent motions, pleadings, orders or other related documents shall be made part of such file. The clerk shall also provide for a permanent docket to be kept as required by Iowa Ct. R. 35.5. All complaints filed by or on behalf of the board shall be docketed therein, and such file and docket shall be kept in substantially the same manner as the records relating to civil actions in district court.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.5 Report of filing. The clerk shall report the filing of each complaint to the chair of the commission, who shall by written order direct that the complaint be heard by the commission as a whole or a specified division thereof.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.6 Notice.

36.6(1) Upon the filing of such complaint, the clerk of the grievance commission shall serve a written notice thereof with a copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules upon the respondent.

36.6(2) The clerk may serve notice of the complaint by personal service in the manner of an original notice in civil suits or by restricted certified mail to the respondent's last address as shown by records accessible to the court. The notice shall also notify said respondent to file a written answer to the complaint within 20 days after completed service of the notice. Written return of service shall be made by the person making the service if by personal service, or by the clerk with postal receipts attached to the return if by restricted certified mail, and such return of service shall be filed in the cause. Service shall be deemed complete on the date of personal service or date shown by the postal receipt of delivery of said notice to the respondent or refusal of the respondent to accept delivery. The notice shall be deemed sufficient if it substantially complies with the form that accompanies these rules.

36.6(3) If service cannot be obtained pursuant to rule 36.6(2), the clerk of the grievance commission may serve notice of the complaint on the clerk of the supreme court who is appointed to receive service on behalf of lawyers subject to Iowa's disciplinary authority. Iowa R. Prof'l Conduct 32:8.5 cmt. [1]. Service upon the clerk of the supreme court is deemed to be completed service of the notice on the respondent. Simultaneously with serving notice on the clerk of the supreme court, the clerk of the grievance commission shall forward the notice and a copy of the complaint to the respondent by restricted certified mail to the respondent's last address as shown by records accessible to the court. The notice shall notify said respondent to file a written answer to the complaint within 20 days after completed service of the notice. The clerk shall file with the clerk of the supreme court an affidavit attesting that notice was sent to the respondent by restricted certified mail.
[Amendment by Court Order November 20, 1981; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.7 Answer. The respondent shall file a written answer to the complaint within 20 days from the completed service of notice. For good cause shown upon written application, the grievance commission may grant an extension of time for filing an answer. If the respondent fails or refuses to file such answer within the time specified, the allegations of the complaint shall be considered admitted, and the matter shall proceed to a hearing on the issue of the appropriate sanction.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; January 5, 2001; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.8 Hearing. The chair of the commission, or the president of any division to which a complaint has been referred, shall direct a hearing to be held upon the complaint within a reasonable time in the county of the respondent's residence or, at the discretion of the chair, within any other judicial district as shall most nearly serve the convenience of the parties and shall designate by written order the time and place for the hearing. The clerk shall mail a copy of the order to all parties and attorneys at least ten days before the date set for the hearing. If the respondent files written objections to hearing the complaint in the county of the respondent's residence, the hearing shall be held at such other place as the chair or division president shall direct by written order, in which case a new notice shall be given.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.9 Continuances. A hearing shall not be continued except for good cause. Except in case of emergency, any motion for continuance shall be filed at least seven days before the day of hearing. Any objections to continuance shall be filed promptly.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.10 Oaths. Any member of the grievance commission is hereby empowered to administer oaths or affirmations to all witnesses and shall cause such testimony to be officially reported by a court reporter.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 36.11 Filing of documents. All answers, motions, applications, petitions, and pleadings in connection with a complaint shall be filed in duplicate with the grievance commission clerk's office in Des Moines, Iowa. The clerk shall prepare and mail copies to the respondent, the chair of the board, attorneys of record, and to the chair of the commission if sitting as a whole, or to the president of a division of the commission to whom such complaint has been referred. On and after the day fixed for hearing, such papers may be filed in duplicate with the chair of the commission or the president of the division, who shall notify all parties and attorneys of the filing and a copy shall be filed with the clerk.
[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.12 Request for hearing — preliminary matters. If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chair of the commission sitting as a whole or the president of the division to whom such complaint has been referred shall by written order fix a time and place of hearing upon such motion or application and shall notify all parties and attorneys. After such hearing or if none is requested, the chair or president of a division, as the case may be, or any member of the commission or division designated by the chair or president, shall file a written ruling upon such motion or application, and thereafter all parties shall promptly comply with the ruling's terms and conditions.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.13 Challenge regarding impartiality — four member divisions. Within the time allowed for filing an answer to the complaint, the respondent may challenge the impartiality of any member of the commission or division by filing a motion setting forth the grounds therefor. Said motion shall be disposed of as provided in rule 36.12. If the challenge is sustained, the vacancy thus created shall be filled as provided in rule 36.16.

With the consent of the complainant and the respondent, a division of the grievance commission may consist of four members. In the event the four-member division is evenly divided between a recommendation of sanction and dismissal, the division shall enter a dismissal of the complaint pursuant to the provisions of Iowa Ct. R. 35.9. Upon such dismissal, the complainant may apply for permission to appeal pursuant to Iowa Ct. R. 35.11.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.14 Conduct of hearing.

36.14(1) At the time and place fixed for the hearing upon any complaint, the commission or division shall proceed to hear the evidence, briefs of authorities and arguments. The hearing shall not be open to the public.

36.14(2) The respondent may present character evidence by sworn affidavit, which shall be filed as part of the respondent's exhibits. The affidavit shall be admitted into evidence unless the complainant indicates, at least three days prior to the scheduled hearing date, that it intends to cross-examine the affiant. In such case, the affidavit shall not be received into evidence, and the affiant shall testify in the manner of all other witnesses. The respondent may similarly offer the character evidence of a subpoenaed judge by sworn affidavit, subject to the same constraints if the complainant timely indicates its intention to cross-examine the affiant judge. All other witnesses shall testify at the hearing after administration of an oath or affirmation by a member of the grievance commission or other person authorized by law to administer oaths, and their testimony shall be taken in writing by a duly qualified reporter.

36.14(3) The respondent may defend and shall have the right to participate in the hearing in person and by counsel, to cross-examine, to be confronted by witnesses, and to present evidence in accordance with the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence.

36.14(4) The presentation of evidence shall conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence. All questions of procedure, including objections to evidence, shall be determined by the chair of the commission or president of the division.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; January 24, 2003; April 20, 2005, effective July 1, 2005]

Rule 36.15 Action upon complaint — report of decision. At the conclusion of a hearing upon any complaint against an attorney, the commissioners are empowered to dismiss the complaint, issue a private admonition, or recommend that the supreme court reprimand the respondent or suspend or revoke the respondent's license. If the commissioners recommend a reprimand, suspension, or revocation, they shall file with the supreme court clerk a report of their findings of fact, conclusions of law, and recommendations within 30 days of the date set for filing of the last responsive brief and argument. As part of its report, the commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline. The report shall contain a proof of service showing it was served upon the respondent as provided in Iowa R.

App. P. 6.31. The matter shall then stand for disposition in the supreme court.

Any commissioner has the right to file with the supreme court clerk a dissent from the majority determination or report. The clerk shall promptly cause a copy of a dissent to be served on the respondent.

If the commissioners dismiss the charges, no publicity shall be given to any of the proceedings except at the request of the respondent. All reports and recommendations of the commissioners shall be concurred in by at least 3 members of the division or at least 12 members of the commission, as the case may be, all of whom shall have been present throughout the proceedings.

[Amendment by Court Order December 10, 1982; July 18, 1983; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; August 28, 2003; April 20, 2005, effective July 1, 2005]

Rule 36.16 Substitutions and vacancies. In case of the absence or inability of the chair and vice chair of the commission sitting as a whole to perform any of the duties provided for herein, said commission may designate some other member as acting chair to perform such duties. In case of the absence or inability of the president of a division to perform any of the duties provided for herein, said division may designate some other member thereof as acting president to perform such duties. If a vacancy occurs in any division from any cause, the same shall be filled by the chair, vice chair or acting chair of the commission.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.17 Harmless error — substantial prejudice test. An omission, irregularity, or other defect in procedure shall not render void or ineffective any act of the commission or a division or any member thereof unless substantial prejudice is shown to have resulted.

[Amendment by Court Order December 28, 1989, effective February 15, 1990; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 36.18 Confidentiality.

36.18(1) All records, papers, proceedings, meetings, and hearings of the commission shall be confidential, unless the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license.

36.18(2) If the commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license, the commission's report of reprimand or recommendations for license suspension or revocation shall be a public document upon its filing with the clerk of the supreme court. In addition, if the commission recommends the supreme court reprimand the respondent or suspend or revoke the respondent's license, the complaint filed with the commission by the Iowa Supreme Court Attorney Disciplinary Board shall become a public document.

36.18(3) Any other records and papers of the commission concerning any complaint shall remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission. The respondent, the attorneys, or the attorneys' agents involved in the proceeding before the commission shall not disclose any records and papers of the commission concerning any complaint to any third parties unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers of the commission concerning any complaint shall not be admissible in evidence in a judicial or administrative proceeding other than the formal commission proceeding under rule 36.14.

36.18(4) Every witness in every proceeding under this chapter shall swear or affirm to tell the truth and not to disclose the existence of the proceedings or the identity of the respondent until the proceeding is no longer confidential under these rules.

36.18(5) All communications, papers, and materials concerning any complaint which may come into the hands of a commission member shall remain confidential and the member shall keep the same in a safe and secure place.

36.18(6) The clerk of the commission, the chair, or a member of the commission designated by the chair may issue one or more clarifying announcements when the subject matter of a complaint is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other member of the

commission shall make any public statement concerning any matter before the commission without prior approval of the commission.

36.18(7) Nothing in this chapter shall prohibit the commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, to attorney disciplinary and bar admission authorities in other jurisdictions, or any information regarding possible violations of the Iowa Code of Judicial Conduct to the Commission on Judicial Qualifications.

[Court Order April 20, 2005, effective July 1, 2005]

Rules 36.19 and 36.20 Reserved.

Rule 36.21 Forms.

Rule 36.21 — Form 1: *Notice of Complaint.*

BEFORE THE GRIEVANCE COMMISSION OF
THE SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board, <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">vs.</p> Name, Attorney at Law, of _____, Iowa, <p style="text-align: center;">Respondent.</p>	NOTICE OF COMPLAINT
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To _____,
Respondent:

You are notified that there is now on file with the Clerk of the Grievance Commission of the Supreme Court of Iowa at the Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319, a complaint alleging that you have committed unethical practices as an attorney and counselor at law.

A copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules are attached and made a part of this notice.

You are further notified to file your written answer to the complaint within 20 days from the completed service of this notice and to abide by any further orders of the commission made in accordance with chapter 36 of the Iowa Court Rules.

You are further notified that the commission will hear this complaint in accordance with the rules and will take action as may be warranted by the facts and circumstances disclosed at the hearing.

Dated this _____ day of _____, 20 ____.

Clerk of the Grievance Commission
 Iowa Judicial Branch Building
 1111 East Court Avenue
 Des Moines, Iowa 50319

[Court Order June 23, 1975; November 20, 1981; June 25, 1987, effective August 3, 1987; December 28, 1989, effective February 15, 1990; December 15, 1994, effective January 3, 1995; February 19, 2001; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005]

CHAPTER 39
CLIENT SECURITY COMMISSION

Rule 39.1	Client Security Commission
Rule 39.2	Principal executive officer
Rule 39.3	Clients' security trust fund of the bar of Iowa
Rule 39.4	Audit — treasurer's duties — budget
Rule 39.5	Annual disciplinary fee
Rule 39.6	Fund assessments
Rule 39.7	Certificate of exemption — required statement
Rule 39.8	Enforcement
Rule 39.9	Claims
Rule 39.10	Investigations and audits
Rule 39.11	Annual questionnaire
Rule 39.12	Investigations, audits, and annual questionnaire — enforcement
Rule 39.13	Attorneys acting as fiduciaries
Rule 39.14	Reinstatement from exemption or suspension
Rule 39.15	Denial of reinstatement for failure to comply with certain obligations

CHAPTER 39 CLIENT SECURITY COMMISSION

Rule 39.1 Client Security Commission.

39.1(1) *Commission.* There is hereby created a Client Security Commission, hereinafter referred to as “commission,” which shall have the duties and powers provided in this chapter.

39.1(2) *Duties of commission.* The commission shall have the following duties and powers as limited and defined in this chapter:

a. To examine lawyer defalcations and breaches of Iowa Rules of Professional Conduct, the rules relating to the discipline of members of the Iowa bar, and to make recommendations to the supreme court concerning rule changes deemed necessary or desirable in this area.

b. To assist the court in administering both preventive and remedial attorney disciplinary procedures contained in these rules or other court rules.

c. To administer and operate the Clients’ Security Trust Fund of the Bar of Iowa, as hereinafter created, designated as the “fund.”

39.1(3) *Appointment of commissioners.* The supreme court shall appoint five members of the Iowa bar and two laypersons who are residents of this state to the commission. The original appointment shall be two commissioners for a one-year term, two for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms, all subsequent appointments shall be for a term of four years, and any commissioner who has served two full terms shall not be eligible for reappointment. A vacancy occurring during a term shall be filled by the supreme court for the unexpired portion thereof.

39.1(4) *Organization and meetings.* The commissioners shall organize annually and shall then elect from among their number a chair and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chair or of the majority of the commissioners. Five commissioners shall constitute a quorum and may transact all business except as may be otherwise provided by this chapter and chapter 40 of the Iowa Court Rules.

39.1(5) *Regulations.* The commission shall adopt regulations, consistent with this chapter and subject to the approval of the supreme court, concerning all of the powers and duties granted to and imposed upon the commission by this chapter.

39.1(6) *Reimbursement.* The commissioners shall serve without compensation but shall be entitled to reimbursement from the fund for their expenses reasonably incurred in the performance of their duties.

[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; May 25, 2004; April 20, 2005, and July 1, 2005, effective July 1, 2005]

Rule 39.2 Principal executive officer.

39.2(1) *Appointment.* The director of the office of professional regulation shall serve as the principal executive officer of the client security commission. Wherever in this chapter a reference to the “director” appears, it shall refer to the director of the office of professional regulation. The director shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.

39.2(2) *Duties of director.* Subject to the supervision of the supreme court and the commission, the director shall do the following:

a. Collect attorney fees and assessments for the fund and report to the commission the names and addresses of all attorneys who fail to pay the fee and assessment.

b. Serve as executive secretary to the commission and assist in the operation and administration of the fund.

c. Conduct investigations and audits of attorneys’ accounts and office procedures to determine compliance with this chapter, Iowa Rule of Professional Conduct 32:1.15, and chapter 45 of the Iowa Court Rules and report violations to the commission.

d. Maintain an office in such place as the supreme court shall designate, act as a liaison between the court, the commission, and other commissions, committees, boards, and personnel serving a function in the disciplinary system, and maintain for the court records of disciplinary proceedings and such other information and data as the court shall require.

e. Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to chapter 35 of the Iowa Court Rules.

f. Perform such other functions and duties as may be directed by the supreme court.
[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007]

Rule 39.3 Clients' security trust fund of the bar of Iowa.

39.3(1) *Creation, operation and purpose.* A trust fund, to be known as the "Clients' Security Trust Fund of the Bar of Iowa" (hereinafter, the "fund") is hereby authorized and created.

39.3(2) *Administration.* The fund shall be operated and administered by the commission in accordance with this chapter.

39.3(3) *Purpose.* The purpose of the fund shall be to prevent defalcations by members of the Iowa bar, and insofar as practicable, to provide for the indemnification by the profession for losses caused to the public by the dishonest conduct of members of the bar of this state, and to provide funding for the administration of the lawyer disciplinary system and other programs which impact the disciplinary system including, but not limited to, the Iowa Lawyer's Assistance Program.

39.3(4) *Powers and duties of commission relating to the fund.* The commission, in addition to the powers granted elsewhere in this chapter, shall have the following powers and duties:

a. To receive, hold, manage, and distribute, pursuant to the direction of the supreme court and this chapter, the moneys raised hereunder, and any other amounts that may be received by the fund through voluntary contributions or otherwise.

b. To adopt, subject to the approval of the supreme court, regulations for the administration of the fund and the procedures for presentation, consideration, recognition, rejection and payment of claims, and for conducting business. A copy of such regulations shall be filed with the clerk of the supreme court.

c. To enforce claims for restitution, arising by subrogation or assignment or otherwise.

d. To invest the fund, or any portion thereof, in those investments and in the percentages authorized by Iowa Code section 97B.7, (investments for Iowa public employees' retirement system); provided, however, the commission shall not be required to invest such portions of the fund as it may deem necessary to be currently available for payment of claims and other expenses required by this chapter. All interest or other income received in the operation of the fund shall become a part of the fund.

e. To employ and compensate consultants, agents, legal counsel and employees.

f. To delegate the power to perform routine acts which may be necessary or desirable for the operation of the fund, including the power to authorize disbursements for routine operating expenses of the fund, and all necessary expenses of the assistant administrator and staff in the performance of their duties; but authorization for payment of claims shall be made only by the commission under the provisions of this chapter.

g. To sue in the name of the commission without joining any or all individual commissioners.

h. To purchase complementary fidelity coverage for the fund in such amount and with such limitations or deductible limits as in its discretion it determines proper.

i. To pay reasonable and necessary attorney fees incurred by the commissioners of the supreme court in implementing chapter 35 of the Iowa Court Rules in disciplinary proceedings based on attorney defalcations or which are initiated pursuant to rule 39.2(3)(e).

j. To fund programs which the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program shall not exceed two and one-half percent of the fund value as of the beginning of the fiscal year in which the funding is to occur. No such funding may be provided unless there is at least twice the minimum balance required by rule 39.6(4) in the fund at the beginning of the fiscal year in which the funding is to occur.

39.3(5) *Applications to the supreme court.* The commission may apply to the supreme court for interpretations of this chapter and of the extent of the commission's powers thereunder and for advice regarding the proper administration of the fund. Interpretations of the supreme court shall be obligatory when rendered.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 39.4 Audit — treasurer's duties — budget.

39.4(1) *Audit and report.* On March 1 of each year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail

the administration of the fund during the preceding calendar year together with an audit of the fund certified by a certified public accountant licensed to practice in Iowa.

39.4(2) Treasurer's duties. The treasurer elected by the commission shall maintain the assets of the fund in a separate account and shall disburse moneys from the fund only at the direction of the supreme court or upon the action of the commission pursuant to this chapter. The treasurer shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund. A separate bookkeeping account designated as the disciplinary fund account shall be maintained within the fund for moneys derived from the annual disciplinary fee set out in rule 39.5. Fees, penalties, or investment income derived from the investment of the income from annual disciplinary fees and penalties shall be placed in the disciplinary fund account.

39.4(3) Budget. At least 60 days prior to the commencement of each fiscal year, the commission shall submit to the supreme court its budget of operations of such year, which may be amended thereafter as necessity dictates.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007]

Rule 39.5 Annual disciplinary fee. As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, unless exempted, shall pay to the commission through the office of professional regulation an annual fee as determined by the supreme court to finance the disciplinary system. The annual fee shall be due on or before March 1 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31. Members of the bar of the supreme court who certify in writing to the commission that they are a justice, judge, associate judge, or full-time magistrate of any court, spend full time in the military service of the United States following admission to the Iowa bar, are admitted on examination to the bar of Iowa during the current calendar year, or are issued a certificate of exemption pursuant to the provisions of rule 39.7 shall be exempt from payment of this fee.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; December 2, 2011]

Rule 39.6 Fund assessments.

39.6(1) Assessments. As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, except one to whom a certificate of exemption has been issued pursuant to the provisions of rule 39.7, shall pay to the commission through the office of professional regulation the assessment specified in rule 39.6(2), or assessments provided by court order, [subject to rules 39.6(3), 39.6(4), and 39.6(5)] annually to prevent defalcations and insofar as practicable to provide indemnification for losses caused to the public by dishonest conduct of members of the Iowa bar. Assessments shall be due on or before March 1 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

39.6(2) Assessment schedule.

For the calendar year of the member's admission on examination to the bar of Iowa, and for the calendar year thereafter. None.

For the calendar year of the member's admission on motion to the bar of Iowa \$50.

For the years other than those heretofore exempted, up to and including the fifth calendar year of admission to the bar of Iowa \$50 annually.

For the years after the fifth calendar year of admission to the bar of Iowa \$100 annually.

In making any of the above calculations, time spent full-time in the military service of the United States following admission to the Iowa bar and during the years under consideration shall be excluded.

[Court Order June 13, 1979; November 13, 1984; November 15, 1985; November 11, 1986; November 19, 1987; October 20, 1988; November 16, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; December 5, 2007]

39.6(3) Alternative to fixed assessment. Members of the bar of the supreme court may, at their election, instead of the fixed assessment set forth in rule 39.6(2), pay to the commission, as their assessment for any particular calendar year, an amount equal to one percent of their net income derived from the practice of law in Iowa for the preceding calendar year, but in no event less than \$25. Net income from the practice of law shall be for the purposes of this rule that amount shown on the federal income tax return of such members for the appropriate year as "profit or loss from business or

profession.” The commission may require members so electing to submit to the commission a copy of their federal income tax return for the appropriate year to substantiate the amount due hereunder.

39.6(4) *Certificate of sufficiency.* The commission shall determine the net value of the cash and securities in the fund for the purpose of preventing defalcation as of December 1 of each year. Whenever the value of such assets shall equal \$600,000 after deducting all claims and requests for reimbursement against the fund, not disposed of at the date of valuation, and all expenses properly chargeable against the fund, the commission shall file with the supreme court prior to December 31 of such year a certificate to that effect which shall be known as a certificate of sufficiency. When a certificate of sufficiency is filed with the supreme court, the annual assessment set forth in rule 39.6(2) for the next calendar year after the date of evaluation in said certificate shall be waived for each member of the bar obligated under the above schedule to pay any amount and who has paid assessments to the fund in the total sum of \$200 in prior years notwithstanding anything heretofore or hereinafter provided.

39.6(5) *Judges, government attorneys, corporate counsel.* In lieu of the assessment set forth in rule 39.6(2), any member of the bar of the supreme court who certifies in writing to the commission that the member is a justice, judge, associate judge, or full-time magistrate of any court, or one who performs legal services only for a governmental unit, or one who performs legal services only for a particular person, firm, or corporation (other than a professional legal corporation or a law firm) and stands in the legal capacity with such person, firm, or corporation as an employee, shall pay to the commission an assessment of \$25 annually while so engaged, provided that if under rule 39.6(4) the commission has filed a certificate of sufficiency with the court then the annual assessment for each bar member referred to herein who has paid to the commission a total of \$200 in assessments shall be waived each year that the certificate of sufficiency is filed by the commission. Provided, however, that a retired judge or justice recalled for temporary service shall not be required to pay an assessment or surrender their certificate of exemption.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007]

Rule 39.7 Certificate of exemption — required statement. A member of the bar of the supreme court who is not engaged in the practice of law in the state of Iowa may be granted a certificate of exemption by the commission, and thereafter no fee or assessment shall be required from such member unless the member thereafter engages in the practice of law in the state of Iowa, in which case the certificate of exemption shall without further order of court stand revoked and the member shall file at once the statement required by rule 39.8(1), and the questionnaire required by rule 39.11 and pay the fee and assessment due under rules 39.5 and 39.6. A member of the bar requesting a certificate of exemption shall file with the director the statement required by rule 39.8(1), and such part of the rule 39.11 questionnaire as the director may deem necessary to determine the member’s status. The practice of law as that term is employed in this chapter includes the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns as well as the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be one who instructs others in legal rights; or to be a judge or one who rules upon the legal rights of others unless neither the state nor federal law requires the person so judging or ruling to hold a license to practice law.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007]

Rule 39.8 Enforcement.

39.8(1) To facilitate the collection of the annual fee and assessment provided for in rules 39.5 and 39.6, all members of the Iowa bar required to pay the fee and assessment, and those exempted other than by rule 39.7, shall, on or before March 1 of each year, file a statement, on a form prescribed by the director, setting forth their date of admission to practice before the supreme court, their current residence and office addresses, and such other information as the director may from time to time direct. In addition to such statement, every bar member shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons admitted to practice before the supreme court shall file the statement required by this rule at the time of admission but no annual fee or assessment shall be payable until the time above provided. All attorneys failing to file the required statement by March 1 of each year shall, in addition to the annual fee and assessment

provided for above, pay a penalty¹ as set forth in the following schedule if the statement is filed after March 1. The penalty fees collected shall be used to pay the costs of administering the fund, or for such other purposes within the Office of Professional Regulation as the supreme court may direct.

²Penalty Schedule:

If Filed:	Penalty:
After March 1 but before April 2	\$100
After April 1 but before May 2	\$150
After May 1	\$200

39.8(2) Attorneys who fail to timely pay the fee and assessment required under rules 39.5 and 39.6, or fail to file the statement or supplement thereto provided in rule 39.8(1), may have their right to practice law suspended by the supreme court, provided that at least 15 days prior to such suspension, a notice of delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305, or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys shall be given the opportunity during said 15 days to file in duplicate in the office of professional regulation an affidavit disclosing facts demonstrating the noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate in the office of the clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney shall be notified thereof by either of the two methods above provided for notice of delinquency.

39.8(3) Any attorney suspended pursuant to this chapter shall do all of the following:

- a. Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.
- b. Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.
- c. Within 30 days refund any part of any fees paid in advance that have not been earned.
- d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.
- e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.
- f. Keep and maintain records of the steps taken to accomplish the foregoing.
- g. Within 30 days file proof with the supreme court and with the Iowa Supreme Court Attorney Disciplinary Board of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

39.8(4) Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

39.8(5) Attorneys who have been suspended pursuant to this chapter or who currently hold a certificate of exemption and who practice law or who hold themselves out as being authorized to practice law in this state are engaged in the unauthorized practice of law and may also be held in

1. The penalty prior to January 1, 2009, is \$25.

2. Penalty schedule effective January 1, 2009.

contempt of the court or may be subject to disciplinary action as provided by chapter 35 of the Iowa Court Rules.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; April 25, 2008³; June 5, 2008, effective July 1, 2008; January 19, 2010]

Rule 39.9 Claims.

39.9(1) The commission shall consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state acting either as an attorney or fiduciary, provided that all of the following are established:

a. Said conduct was engaged in while the attorney was a practicing member of the bar of this state and the claim arises out of the practice of law in this state. The commission shall not consider any claim resulting from conduct engaged in after an attorney's license to practice in Iowa has been revoked. For purposes of this rule, a practicing member of the bar of this state is:

(1) A member of the bar of Iowa whose license is active and in good standing at the time of the dishonest conduct giving rise to the claim, or

(2) A member of the bar of Iowa whose license has been suspended and whom the client reasonably believes to be licensed, active, and in good standing at the time of the dishonest conduct giving rise to the claim. If the attorney has been suspended more than six months prior to the time of the dishonest conduct giving rise to the claim, it shall be presumed that the client was unreasonable in believing that the attorney was licensed, active, and in good standing at the time of the dishonest conduct.

b. Such defalcation or dishonest conduct occurred after January 1, 1974.

c. The claim is made within one year after the client's discovery of the loss; provided, however, such time limitation in unusual circumstances may be extended by the commission in its discretion for good cause shown.

d. The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

e. The commission is satisfied that there is no other source or collateral source for the reimbursement of the loss.

f. Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship or a fiduciary relationship.

39.9(2) The commission is invested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the fund, and if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made. The commission's powers in this respect may be exercised only by the affirmative vote of at least four commissioners. In making such determinations, the commission shall consider among other appropriate factors, the following:

a. The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented.

b. The total amount of reimbursable losses in previous years for which total reimbursement has not been made, if any, and the total assets of the fund.

c. The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants.

d. The degree of hardship suffered by the claimant as a result of the loss.

e. The degree of negligence, if any, of the claimant which may have contributed to the loss.

f. The total amount of losses caused by defalcations of any one attorney or associated group of attorneys.

39.9(3) The commission shall, by regulation approved by the supreme court, fix the maximum amount which any one claimant may recover from the fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

39.9(4) No claimant or any other person or organization shall have any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund shall be a matter of grace and not of right.

39.9(5) The commission may require as a condition to payment that the claimant execute an assignment of claimant's right against the defaulting lawyer.

3. Penalty schedule in 39.8(1) effective January 1, 2009

39.9(6) No claimant need be represented by counsel before the commission. No attorney representing a claimant shall receive a fee for services from the fund. Any agreement for compensation between a claimant and any attorney retained for prosecution of the claim shall be subject to the approval of the commission.

39.9(7) The commission may request individual lawyers, bar associations, and other organizations of lawyers to assist the commission in the investigation of claims.

39.9(8) The payment or denial of any claim filed under the provisions of this rule shall be inadmissible as evidence in any disciplinary or contempt proceeding.

[Court Order December 5, 1973; April 22, 1974; October 16, 1974; April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976; November 21, 1977; January 15, 1979; June 20, 1980; April 21, 1982; November 13, 1984; April 25, 1985; February 16, 1990, effective March 15, 1990; December 15, 1994, effective January 3, 1995; March 6, 1995; January 24, 2000; November 9, 2001, effective February 15, 2002; February 20, 2012]

Rule 39.10 Investigations and audits.

39.10(1) Each member of the bar of Iowa, in filing the statement required by rule 39.8(1), shall authorize the director to investigate, audit, and verify all funds, securities, and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other forms of maintaining trust property as required by Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules, together with deposit slips, canceled checks, and all other records pertaining to transactions concerning such property.

39.10(2) Each member of the bar of Iowa shall comply promptly with any request by the director to execute and deliver to the director a written authorization, directed to any bank or depository, for the director to audit and inspect such accounts, safe deposit boxes, securities, and other forms of maintaining trust property by the member in such bank or other depository.

39.10(3) Each member of the bar of Iowa shall do all of the following:

a. Cooperate fully with the director in any investigation, audit, or verification of any funds, securities, or property held in trust by that lawyer.

b. Answer all questions posed by the director which relate to any investigation, audit, or verification, unless claiming the privilege against self-incrimination.

c. Retain complete records of all trust fund transactions for a period of not less than six years following completion of the matter to which they relate, in accordance with Iowa Rule of Professional Conduct 32:1.15 and Iowa Ct. R. 45.2(2).

39.10(4) The commission with the approval of the supreme court may retain, compensate from the fund, and furnish as staff for the director, such public or certified accountants, investigators, or attorneys as may be deemed necessary to carry out the duties and functions imposed upon the director. When acting under the director's supervision and direction, such staff personnel shall have all the powers granted to the director by this chapter.

39.10(5) When the investigation, audit, or verification provisions of this chapter disclose, in the opinion of the director, a violation of the Iowa Rules of Professional Conduct, or when the member of the bar of Iowa affected by the investigation, audit, or verification has refused to comply with the provisions of this chapter, the director shall promptly report such circumstances to the commission. A copy of such report shall be furnished to the member affected.

39.10(6) However, client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state shall not be subject to investigation, audit, or verification except to the extent such funds and property are related to matters affecting Iowa clients. State or federal funds or property subject to state or federal auditing procedures and in control of an Iowa licensed attorney employed full- or part-time by a state or the United States shall not be subject to investigation, audit, or verification under the provisions of this chapter.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007]

Rule 39.11 Annual questionnaire.

39.11(1) The director under the supervision of the supreme court and the commission shall prepare a questionnaire to be annually submitted to and completed by each member of the bar of Iowa except those who have been issued a certificate of exemption pursuant to rule 39.7. Said questionnaire may be (but is not required to be) incorporated as a part of the annual statement provided in rule 39.8(1). This questionnaire shall elicit information to determine whether the member is complying with the Iowa Court Rules, including but not restricted to, Iowa Rule of Professional Conduct 32:1.15 and

chapter 45 of the rules. The commission may prescribe an electronic format for the questionnaire and annual statement and require submission of the questionnaire and annual statement in that form.

39.11(2) A failure to complete and return a questionnaire shall be addressed as provided in rule 39.12.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; June 5, 2008, effective July 1, 2008]

Rule 39.12 Investigations, audits, and annual questionnaire — enforcement.

39.12(1) *Failure of bar members to cooperate.*

a. The continued right of a member of the Iowa bar to practice law in this state is conditioned upon the member executing and delivering the authorization provided in rule 39.10(2), furnishing the cooperation required in rule 39.10(3), and completing and returning the annual questionnaire described in rule 39.11. Upon failure of a member of the Iowa bar to comply with any of the rules specified in this paragraph, the member's right to practice law before Iowa courts may be suspended, following the procedure specified in rule 39.8(2).

b. A member of the bar of Iowa who willfully fails to comply with those rules enumerated in rule 39.12(1)(a) may be held in contempt of the supreme court or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

39.12(2) *Violation of the Iowa Rules of Professional Conduct.*

a. When the audit, investigation, or verification of funds, securities, or other property held in trust by any member of the bar of Iowa, or a return of any member on the annual questionnaire, discloses an apparent violation of the Iowa Rules of Professional Conduct, the director upon request of the commission, or the commission, may institute disciplinary proceedings under chapter 35 of the Iowa Court Rules for the suspension or revocation of the member's license to practice law in this state.

b. All information obtained by the director and staff by virtue of the audits, investigations and verifications, and annual questionnaire, shall be held in strict confidence by them and by the supreme court and the commission unless otherwise directed by the supreme court or unless proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules, such information relating to the named respondent may be released only to the respondent, the disciplinary board, and the grievance commission. If proceedings are initiated pursuant to Iowa Code section 602.10123, such information relating to the named accused may be released only to the accused and the attorney general or the special assistant attorney general designated pursuant to Iowa Code section 602.10127, to prosecute the charges.

39.12(3) *Commission subpoena authority.*

a. The commission shall have subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person designated to conduct the investigation on behalf of the commission.

b. The commission chair, or other commission member in the absence of the chair, shall have authority to issue a subpoena.

c. The district court for the county in which the investigation is being conducted shall have jurisdiction over any objection or motion relating to a subpoena and authority to punish disobedience of a subpoena in a contempt proceeding.

d. Counsel for the commission, the director, or any other person authorized to administer oaths shall have authority to administer an oath or affirmation to a witness.

[Court Order December 5, 1973; September 19, 1974; October 16, 1974; April 9, 1975; April 30, 1982; August 14, 1986, and August 18, 1986, effective September 2, 1986; May 10, 1990, effective July 2, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005; December 5, 2007]

Rule 39.13 Attorneys acting as fiduciaries.

39.13(1) After January 1, 1974, unless a lawyer is the spouse of or is the son-in-law or daughter-in-law of or is related by consanguinity or affinity, within the third degree, to the decedent in an estate, the ward in a conservatorship, the settlor or beneficiary of a trust, or unless such attorney is coexecutor, cotrustee, or coconservator with another party or parties and such other party or parties will receive and pay out any of the funds, securities or other property of the estate, trust, or conservatorship, such lawyer shall not be appointed by a court in any fiduciary capacity for an estate, trust, or conservatorship until the lawyer has posted a bond in an amount to be determined by the

court with sureties approved by the court, and no waiver of such bond shall be recognized by any court of this state. In the event the surety on the bond posted by the lawyer is not a corporate surety, the surety thereon shall not be the ward, any beneficiary or distributee or be related to the lawyer, the ward, or any beneficiary or distributee within the third degree of consanguinity or affinity.

39.13(2) A lawyer who willfully fails to comply with the provisions of this rule may be held in contempt of the supreme court, or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

[Court Order November 9, 2001, effective February 15, 2002]

See Iowa Code §§633.173, 633.175.

Rule 39.14 Reinstatement from exemption or suspension.

39.14(1) An attorney who has been suspended for failure to pay the annual fee or assessment or for failure to file the statement, supplement, or questionnaire required by these rules may be reinstated upon a showing that such failure was not willful and by filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11. An attorney seeking reinstatement after suspension for failure to comply with the provisions of this rule shall pay all delinquent fees, assessments and late filing penalties due under rules 39.5, 39.6 and 39.8, and a reinstatement fee of \$100.

39.14(2) An attorney who applies for reinstatement from suspension under the provisions of chapter 35 shall first file the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, pay all fees, assessments and late filing penalties due and unpaid under rules 39.5, 39.6 and 39.8 at the time of the suspension, pay the current fee and assessment required by rules 39.5 and 39.8, and a reinstatement fee of \$100.

39.14(3) An attorney who has been granted a certificate of exemption under the provisions of rule 39.7 may be reinstated after filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, paying all late filing penalties due at the time the exemption was granted, and paying the current fee and assessment required by rules 39.5 and 39.6.

[Court Order April 25, 2008; August 10, 2009]

Rule 39.15 Denial of reinstatement for failure to comply with certain obligations.

39.15(1) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue. The procedure shall be governed by rule 35.22.

39.15(2) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 35.21.

39.15(3) *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with a support order. The procedure shall be governed by rule 35.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012]

CHAPTER 41
CONTINUING LEGAL EDUCATION FOR LAWYERS

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CHAPTER 41

CONTINUING LEGAL EDUCATION FOR LAWYERS

Rule 41.1 Purpose. Only by continuing their legal education throughout their period of the practice of law can attorneys fulfill their obligation competently to serve their clients. Failure to do so shall be grounds for disciplinary action by the supreme court. This chapter establishes minimum requirements for such continuing legal education and the means by which the requirements shall be enforced.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

Rule 41.2 Continuing legal education commission.

41.2(1) There is hereby established a commission on continuing legal education consisting of 12 members. The supreme court shall appoint to the commission ten resident members of this state who are currently licensed to practice law in the state of Iowa, and two residents of this state who are not lawyers. The court shall designate from among the members of the commission a chair who shall serve as such at the pleasure of the court. Of the members first appointed to the commission four shall serve a term of three years, four shall serve a term of four years, and four shall serve a term of five years. Members thereafter appointed, except for those appointed to fill unexpired terms, shall be appointed for a term of three years. No member shall serve more than two consecutive complete terms as a member of the commission. The supreme court shall adopt rules and regulations governing the operations and activities of the commission.

41.2(2) The commission shall have the following duties:

- a.* To exercise general supervisory authority over the administration of this chapter.
- b.* To accredit courses, programs, and other educational activities which will satisfy the educational requirements of this chapter; all being subject to continuous review by the commission.
- c.* To foster and encourage the offering of such courses, programs and educational activities.
- d.* To submit to the supreme court proposed rules and regulations¹ not inconsistent with this chapter to govern the operations and activities of the commission.
- e.* Subject to the approval of the supreme court, to employ such persons as it deems necessary for the proper administration of this chapter.
- f.* To make recommendations to the supreme court concerning this chapter and the enforcement thereof; to present an annual budget and a recommended annual fee for costs of administering this chapter.
- g.* To report promptly to the supreme court concerning any violation of this chapter by any member of the bar of this state.
- h.* On March 1 of each year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the activities of the commission during the preceding calendar year together with an audit of commission funds certified by a certified public accountant licensed to practice in Iowa.

41.2(3) Members of the commission shall not be compensated but shall be reimbursed for expenses incurred by them in the performance of their duties upon vouchers approved by the supreme court.

[Court Order April 9, 1975; July 5, 1978; November 13, 1984; November 14, 1985; November 11, 1986; November 19, 1987; November 21, 1988; November 16, 1989; November 9, 2001, effective February 15, 2002; February 22, 2002; December 5, 2007]

Rule 41.3 Continuing legal education requirement.

41.3(1) Each attorney admitted to practice in this state shall complete a minimum of 15 hours of legal education accredited by the commission, during each calendar year. The commission is authorized, pursuant to guidelines established by the supreme court, to determine the number of hours for which credit will be given for particular courses, programs or other legal education activities. Under rules to be promulgated by the supreme court, an attorney may be given credit in one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited education during any one calendar year.

41.3(2) The 15 hours required by rule 41.3(1) shall include a minimum of 3 hours, every two calendar years, devoted exclusively to the area of legal ethics. Excess hours of education devoted to

1. See Chapter 42 of the Iowa Court Rules

legal ethics can be carried over for purposes of the annual 15-hour requirement under rule 41.3(1) but cannot be carried over beyond the two-year period for the special legal ethics requirement under this rule.

41.3(3) Commencing July 1, 2002, up to 6 hours of the 15 hours required by rule 41.3(1) each calendar year may be obtained through completion of computer-based legal education accredited by the commission.

[Court Order April 9, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002; February 22, 2002; February 21, 2012]

Rule 41.4 Annual fee and report by attorneys to commission.

41.4(1) On or before March 1 of each year, each attorney admitted to practice in this state shall pay to the commission a prescribed fee for costs of administering this chapter.

41.4(2) On or before March 1 of each year, each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal education during the preceding calendar year; provided, however, that an attorney shall not be required to comply with this rule nor comply with the continuing legal education requirements set forth in rule 41.3 for the year during which the attorney was admitted to practice. Each annual report shall be accompanied by proof satisfactory to the commission that the attorney has met the requirements for continuing legal education for the calendar year for which such report is made.

41.4(3) Each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning completion of accredited legal ethics education. The report is to be filed on or before March 1 following completion of each two-year period under the requirement. An attorney shall not be required to comply with this requirement for the year of admission to practice.

41.4(4) All attorneys who fail by March 1 of each year to file the annual report or to pay the prescribed fee shall, in addition, pay a penalty² as set forth in the following schedule if either the annual report is filed or the prescribed fee is paid after March 1. The penalty fees collected shall be used to pay the costs of administering this chapter, or for such other purposes within the Office of Professional Regulation as the supreme court may direct.

³Penalty Schedule:

If Filed:	Penalty:
After March 1 but before April 2	\$100
After April 1 but before May 2	\$150
After May 1	\$200

41.4(5) The commission may prescribe in electronic format for the annual report and require submission of the report in that form.

[Court Order April 9, 1975; August 28, 1975; August 12, 1980; January 8, 1988; January 24, 2000; November 9, 2001, effective February 15, 2002; April 25, 2008; June 5, 2008, effective July 1, 2008; January 19, 2010]

Rule 41.5 Penalty for failure to satisfy continuing legal education requirements.

41.5(1) Attorneys who fail to comply with the provisions of rule 41.4 or who file a report showing on its face that they have failed to complete the required number of hours of continuing legal education may have their right to practice law suspended by the supreme court, provided that at least 15 days prior to such suspension, notice of such delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305 or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys shall be given the opportunity during said 15 days to file in the office of professional regulation an affidavit disclosing facts demonstrating their noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate in the office of clerk of the supreme court a request for

2. The penalty prior to January 1, 2009, is \$25.

3. Penalty schedule in 41.4(4) effective January 1, 2009

hearing to show cause why their license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney shall be notified thereof by either of the two methods above provided for notice of delinquency.

41.5(2) Any attorney suspended pursuant to this chapter shall do all of the following:

a. Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

b. Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

c. Within 30 days refund any part of any fees paid in advance that have not been earned.

d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.

e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

f. Keep and maintain records of the steps taken to accomplish the foregoing.

g. Within 30 days file proof with the supreme court and with the Iowa Supreme Court Attorney Disciplinary Board of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

41.5(3) Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

41.5(4) In addition, any attorney who willfully fails to comply with this chapter may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules, upon report filed by the commission with the disciplinary board.

41.5(5) For good cause shown, the commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports.

[Court Order April 9, 1975; November 21, 1977; December 6, 1978; January 15, 1979; August 12, 1980; April 25, 1985; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; April 25, 2008; June 5, 2008, effective July 1, 2008]

Rule 41.6 Confidentiality. Unless otherwise directed by the supreme court, the files, records and proceedings of the commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of this chapter, shall be deemed confidential and shall not be disclosed, except in furtherance of its duties or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings taken in accordance with this chapter.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

Rule 41.7 Inactive practitioners. A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, upon application to the commission, may be granted a waiver of compliance with this chapter and obtain a certificate of exemption. No person holding such certificate of exemption shall practice law in this state until reinstated. The supreme court will make rules and regulations governing the continuing legal education requirements for reinstatement of attorneys who, for any reason, have not theretofore been entitled to practice law in this state for any period of time subsequent to their admission to the bar.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

Rule 41.8 Application of this chapter. This chapter shall apply to every person licensed to practice law in the state of Iowa.

[Court Order April 9, 1975; November 9, 2001, effective February 15, 2002]

Rule 41.9 Compliance with Iowa rules of professional conduct.

41.9(1) Each lawyer describing the lawyer's practice as permitted by Iowa Rs. of Prof'l Conduct 32:7.4(a) and (c) shall report annually the lawyer's compliance with the eligibility requirements of Iowa R. of Prof'l Conduct 32:7.4(e) on a form approved by the commission. A lawyer may report compliance with the requirement for percentage or hours of practice by providing a statement of compliance.

41.9(2) In reporting compliance with the continuing legal education requirements, the lawyer shall identify the specific courses and hours that apply to each designated or indicated field of practice. The lawyer may obtain up to six hours of the continuing legal education requirement for each designated or indicated field of practice through completion of computer-based legal education courses accredited by the commission.

41.9(3) If, due to hardship or extenuating circumstances, a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by rule 32:7.4(e), the lawyer may apply to the commission for an extension of time in which to complete the hours. No extension of time shall be granted unless written application for the extension is made on a form prescribed by the commission. An extension of time shall not exceed a period of six months immediately following the last day of the year in which the requirements were not met.

41.9(4) The portion of the report required by this rule shall be considered public information.
[Court Order April 20, 2005, effective July 1, 2005]

Rule 41.10 Reinstatement from suspension.

41.10(1) An attorney who has been suspended for failure to pay the annual fee, complete required continuing legal education, or file the annual report required by rule 41.4 may be reinstated upon a showing that such failure was not willful and by filing such report showing completion of all continuing legal education required by Iowa Ct. Rs. 41.3 and 42.2 through the end of the last complete reporting year. An attorney seeking reinstatement after suspension for failure to comply with the provisions of this rule shall pay all delinquent fees and late filing penalties due under rule 41.4 and a reinstatement fee of \$100.00.

41.10(2) An attorney who applies for reinstatement from suspension under the provisions of chapter 35 of the Iowa Court Rules shall first file the annual report required by rule 41.4 showing completion of all continuing legal education required by Iowa Ct. Rs. 41.3 and 42.2 through the end of the last complete reporting year, pay all fees and late filing penalties due under rule 41.4 and unpaid at the time of the suspension, and pay a reinstatement fee of \$100.00. The commission may grant an attorney additional time after the effective reinstatement date, on such terms and conditions as it may prescribe, to complete and furnish evidence of compliance with these continuing legal education requirements.

[Court Order April 25, 2008]

Rule 41.11 Denial of reinstatement for failure to comply with certain obligations.

41.11(1) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue. The procedure shall be governed by rule 35.22.

41.11(2) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 35.21.

41.11(3) *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny a lawyer's application for reinstatement under rule 41.7 or 41.10 for failure to comply with a support order. The procedure shall be governed by rule 35.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012]

Rule 41.12 Basic skills course requirement.

41.12(1) Every Iowa lawyer admitted to practice by examination after December 31, 2008, must complete a Basic Skills Course. The course must be completed within one year of the newly admitted

lawyer's date of admission to practice in Iowa.⁴ The course may be completed after the last day of the bar examination that resulted in admission. If the course is completed after the last day of the bar examination, but the applicant fails the examination, the applicant will remain in compliance with this rule so long as the applicant passes the next examination offered.

41.12(2) The Basic Skills Course must total at least eight actual hours of instruction and include at least one actual hour qualifying for credit in the area of legal ethics. The course shall include instruction on Iowa law selected from at least eight of the following topic areas:

- Civil Procedure
- Criminal Law
- Criminal Procedure
- Family Law
- Guardianships, Conservatorships, Trusts, and Powers of Appointment
- Business Entities
- Probate
- Torts
- Contracts
- Real Estate Transactions
- Ethics and Professionalism

41.12(3) Newly admitted lawyers shall be entitled to claim credit for attendance at an accredited Basic Skills Course against the continuing legal education requirements of rules 41.3 and 42.2, but are not exempt from reporting and fee payment duties of rule 41.4.

41.12(4) A lawyer who fails to complete the Basic Skills Course within one year of the date of admission may have the right to practice law suspended under the provisions of rule 41.5.

41.12(5) The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the Basic Skills Course requirement or extensions of time in which to complete the Basic Skills Course.

41.12(6) The Basic Skills Course may be offered by any provider of continuing legal education, but must be reviewed and accredited by the Commission on Continuing Legal Education as provided in rule 42.4. The Basic Skills Course may be conducted in installments over time, and may be offered by computer-based transmission as provided in rule 42.3. Any provider of the Basic Skills Course is required to report attendance in the manner specified by the commission.

[Court Order October 9, 2009; November 24, 2010]

4. As an interim implementation provision, lawyers admitted during calendar year 2009 must complete the Basic Skills Course within two years of the newly admitted lawyer's date of admission to practice in Iowa.

CHAPTER 42
REGULATIONS OF THE COMMISSION ON CONTINUING
LEGAL EDUCATION

Rule 42.1	Definitions
Rule 42.2	Continuing legal education requirement
Rule 42.3	Standards for accreditation
Rule 42.4	Accreditation of programs and activities
Rule 42.5	Hardships or extenuating circumstances
Rule 42.6	Exemptions for inactive practitioners
Rule 42.7	Reinstatement of inactive practitioners
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CHAPTER 42

REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION

Rule 42.1 Definitions. For the purpose of these regulations, the following definitions shall apply:

An “*accredited program or activity*” shall mean a continuing legal education activity meeting the standards set forth in rule 42.3 which has received advanced accreditation by the commission pursuant to rule 42.4.

An “*attorney*” shall mean any person licensed to practice law in the state of Iowa.

The “*commission*” shall mean the Commission on Continuing Legal Education or any division thereof.

An “*hour*” of continuing legal education shall mean a clock-hour spent by an attorney in actual attendance at or completion of an accredited legal education activity.

“*Legal ethics*” shall mean a separate, designated, and dedicated session of instruction:

1. Referring to and based on the disciplinary rules or ethical considerations of the ethics or professional responsibility code for lawyers in the jurisdiction where the instruction is presented; or
2. Designed to help attorneys detect, prevent, or respond to substance abuse or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and not issues of substance abuse or mental health in general.

A “*quorum*” of the entire commission shall mean six or more members of the commission.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002; February 20, 2012]

Rule 42.2 Continuing legal education requirement.

42.2(1) A minimum of 15 hours of continuing legal education must be completed by each attorney for each calendar year in the manner stated in Iowa Ct. R. 41.3(1). Effective January 15, 1988, each attorney shall, every two years, complete a minimum of two hours of legal education devoted specifically to the area of legal ethics.

42.2(2) Hours of continuing legal education credit may be obtained by attending or participating in a continuing legal education activity, either previously accredited by the commission or which otherwise meets the requirements herein and is retroactively accredited by the commission pursuant to rule 42.4(3).

42.2(3) An attorney desiring to obtain credit for one or more succeeding calendar years, not exceeding two such years, for completing more than 15 hours of accredited legal education during any one calendar year, under Iowa Ct. R. 41.3(1), shall report such “carry-over” credit at the time of filing the annual report to the commission on or before March 1 of the year following the calendar year during which the claimed additional legal education hours were completed.

[Court Order November 25, 1975; December 6, 1978; January 8, 1988; November 9, 2001, effective February 15, 2002]

Rule 42.3 Standards for accreditation.

42.3(1) A continuing legal education activity qualifies for accreditation if the commission determines that the activity complies with all of the following:

a. It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of an attorney.

b. It pertains to common legal subjects or other subject matters which integrally relate to the practice of law.

c. It is conducted by attorneys or individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and preferably is accompanied by a paper, manual, or written outline which substantively pertains to the subject matter of the program.

d. It is presented live or by computer-based transmission. Activities presented by computer-based transmission must be interactive as defined by the accreditation policies of the commission.

42.3(2) No activity will be accredited which involves solely self-study, including television viewing, video or sound recorded programs, or correspondence work, except as may be allowed pursuant to rule 42.5.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002]

Rule 42.4 Accreditation of programs and activities.

42.4(1) *Prior accreditation of activities.* An organization or person that desires prior accreditation of a course, program or other legal education activity satisfying Iowa Ct. R. 41.2, or an attorney who desires to establish accreditation of such activity prior to attendance, shall apply for accreditation to the commission at least 60 days in advance of the commencement of the activity on a form provided by the commission. The commission shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, and other pertinent information.

42.4(2) *Post-accreditation of activities.* An attorney or organization on behalf of an attorney seeking credit for attendance at or participation in an educational activity which has not received prior accreditation shall submit to the commission, within 30 days after completion of such activity, a request for credit, including a brief résumé of the activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested therefor. Within 30 days after receipt of such application, the commission shall advise the attorney or organization in writing by ordinary mail whether the activity is accredited and the number of hours allowed therefor. An attorney or organization not complying with the requirements of this rule may be denied credit for such activity.

42.4(3) *Fee for organization applications for accreditation.* To support administration of this chapter, any organization or other activity sponsor applying for accreditation of an activity shall pay to the commission a prescribed nonrefundable application fee for each activity. No application fee shall be required of an attorney who applies for accreditation solely as an attendee. The commission may waive the application fee for any of the following reasons:

a. For any activity offered at no charge to attendees for the educational portion of the activity.

b. For any presentation of the identical program at additional places or dates during a calendar year, provided the original presentation of the program was approved.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; February 22, 2002; November 23, 2004, effective July 1, 2005]

Rule 42.5 Hardships or extenuating circumstances.

42.5(1) The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission. A \$25 fee will be assessed on all waiver or extension of time applications received after January 15 of the year following the year in which the alleged hardship occurred.

42.5(2) Waivers of the minimum educational requirements may be granted by the commission for any period of time not to exceed one year. In the event that the hardship or extenuating circumstances upon which a waiver has been granted continue beyond the period of the waiver, the attorney must reapply for an extension of the waiver. The commission may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the commission.

42.5(3) Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met. Hours of minimum educational requirement completed within such an extension period shall be applied first to the minimum educational requirement for the preceding year and shall be applied to the current or following year only to the extent that such hours are not required to fulfill the minimum educational requirement for the preceding year.

[Court Order November 25, 1975; August 12, 1980; November 9, 2001, effective February 15, 2002]

Rule 42.6 Exemptions for inactive practitioners. A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7 residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the commission. The application shall contain a statement that the applicant will not engage in the practice of law in Iowa, as defined in Iowa Ct. R. 39.7, without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form prescribed by the commission.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

Rule 42.7 Reinstatement of inactive practitioners.

42.7(1) Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of law in the state of Iowa as defined in Iowa Ct. R. 39.7, satisfy the following requirements for reinstatement:

a. Submit written application for reinstatement to the commission upon forms prescribed by the commission together with a reinstatement fee of \$25 and all late filing penalties due at the time the exemption was granted.

b. Furnish in the application evidence of one of the following:

(1) Having engaged in the full-time practice of law, as defined in Iowa Ct. R. 39.7, in another state of the United States or the District of Columbia and completion of continuing legal education for each year of inactive status substantially equivalent in the opinion of the commission to that required under chapter 41 of the Iowa Court Rules.

(2) Successful completion of an Iowa state bar examination conducted within one year immediately prior to the submission of such application for reinstatement.

(3) Completion of a total number of hours of accredited continuing legal education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant. The continuing legal education required for reinstatement shall include hours devoted specifically to the area of legal ethics, computed as follows: two hours for every two calendar years following January 15, 1988, in which a certificate of exemption shall have been in effect. Alternatively, the legal ethics requirement may be satisfied by obtaining a scaled score of 80 or higher on the Multistate Professional Responsibility Examination within one year immediately prior to the submission of the application for reinstatement.

42.7(2) Notwithstanding that an applicant for reinstatement has not fully complied with the requirements for reinstatement set forth in rule 42.7(1)(b), the commission may conditionally reinstate such applicant on such terms and conditions as it may prescribe regarding the period of time in which the applicant shall furnish evidence of compliance with the requirements of rule 42.7(1)(b). [Court Order November 25, 1975; July 28, 1977; January 8, 1988; December 15, 1994, effective January 3, 1995; April 10, 1997; November 9, 2001, effective February 15, 2002; August 10, 2009]

Rule 42.8 Staff. The assistant director for boards and commissions of the office of professional regulation shall serve as the principal executive officer of the commission. The commission may, subject to the approval of the court, employ such other employees as the commission deems necessary to carry out its duties under chapter 41 of the Iowa Court Rules, who shall perform such duties as the commission may from time to time direct.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002; December 5, 2007]

Rule 42.9 Divisions. The commission may organize itself into divisions of not fewer than three members for the purpose of considering and deciding matters assigned to them.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

Rule 42.10 Hearings. In the event of denial, in whole or in part, of any application, the applicant shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request in writing a hearing before the commission which shall be held within 90 days after receipt of the request for hearing. The decision of the commission after such hearing shall be final. Any hearing on a revocation of the accreditation of an accredited sponsor, the denial of a hardship application, or a recommendation for disciplinary action under Iowa Ct. R. 41.5(4) shall be before a quorum of the entire commission.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

Rule 42.11 Notice of failure to comply. In the event an attorney fails to comply with the provisions of Iowa Ct. R. 41.4 or files a report showing on its face failure to complete the required number of accredited hours of continuing legal education, the commission shall notify said attorney in writing of such apparent noncompliance and said attorney shall have 15 days from the mailing of said notice to cure said failure to comply or make an appropriate application under rule 42.5. If the failure to comply is not cured or such application not approved, the commission shall report promptly to the supreme court the failure of the attorney to comply with chapter 41 of the Iowa Court Rules.

[Court Order November 25, 1975; November 9, 2001, effective February 15, 2002]

CHAPTER 45
CLIENT TRUST ACCOUNT RULES

Rule 45.1	Requirement for client trust account
Rule 45.2	Action required upon receiving funds, accounting, and records
Rule 45.3	Type of accounts and institutions where trust accounts must be established
Rule 45.4	Pooled interest-bearing trust account
Rule 45.5	Definition of “allowable monthly service charges”
Rule 45.6	Lawyer certification
Rule 45.7	Advance fee and expense payments
Rule 45.8	General retainer
Rule 45.9	Special retainer
Rule 45.10	Flat fee

CHAPTER 45 CLIENT TRUST ACCOUNT RULES

Rule 45.1 Requirement for client trust account. Funds a lawyer receives from clients or third persons for matters arising out of the practice of law in Iowa shall be deposited in one or more identifiable interest-bearing trust accounts located in Iowa. The trust account shall be clearly designated as “Trust Account.” No funds belonging to the lawyer or law firm may be deposited in this account except:

1. Funds reasonably sufficient to pay or avoid imposition of fees and charges that are a lawyer’s or law firm’s responsibility, including fees and charges that are not “allowable monthly service charges” under the definition in rule 45.5, may be deposited in this account; or

2. Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited in this account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

Other property of clients or third persons shall be identified as such and appropriately safeguarded. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.2 Action required upon receiving funds, accounting, and records.

45.2(1) Authority to endorse or sign client’s name. Upon receipt of funds or other property in which a client or third person has an interest, a lawyer shall not endorse or sign the client’s name on any check, draft, security, or evidence of encumbrance or transfer of ownership of realty or personalty, or any other document without the client’s prior express authority. A lawyer signing an instrument in a representative capacity shall so indicate by initials or signature.

45.2(2) Accounting and returning funds or property. Except as stated in this chapter or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and shall promptly render a full accounting regarding such property.

45.2(3) Maintaining records.

a. A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these rules and required by Iowa R. of Prof’l Conduct 32:1.15 and shall retain the following records for a period of six years after termination of the representation:

(1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) Ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) Copies of retainer and compensation agreements with clients as required by Iowa R. of Prof’l Conduct 32:1.5;

(4) Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of records showing disbursements on behalf of clients;

(7) The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;

(8) Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient, and the trust account name or number from which money is withdrawn;

(9) Copies of monthly trial balances and monthly reconciliations of the client trust accounts maintained by the lawyer; and

(10) Copies of those portions of client files that are reasonably related to client trust account transactions.

b. With respect to trust accounts required by Iowa R. of Prof’l Conduct 32:1.15:

(1) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(2) Receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) Withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized bank transfer.

c. Records required by this rule may be maintained by electronic, photographic, computer, or other media provided that the records otherwise comply with these rules and that printed copies can be produced. These records shall be accessible to the lawyer.

d. Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of the records specified in this rule.

e. Upon the sale of a law practice, the seller shall make appropriate arrangements for the maintenance of the records specified in this rule.

[Court Order April 20, 2005, effective July 1, 2005; February 20, 2012]

Rule 45.3 Type of accounts and institutions where trust accounts must be established. Each trust account referred to in rule 45.1 shall be an interest-bearing account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence. The financial institution must be authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Interest-bearing trust funds may be placed in accounts at credit unions only to the extent that each individual client's funds are eligible for insurance. Interest-bearing trust funds shall be placed in accounts from which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to observe by law or regulation.

[Court Order April 20, 2005, effective July 1, 2005; April 25, 2008]

Rule 45.4 Pooled interest-bearing trust account.

45.4(1) Deposits of nominal or short-term funds. A lawyer who receives a client's or third person's funds shall maintain a pooled interest-bearing trust account for deposits of funds that are nominal in amount or reasonably expected to be held for a short period of time. A lawyer shall inform the client or third person that the interest accruing on this account, net of any allowable monthly service charges, will be paid to the Lawyer Trust Account Commission established by the supreme court.

45.4(2) Exceptions to using pooled interest-bearing trust accounts. All client or third person funds shall be deposited in an account specified in rule 45.4(1) unless they are deposited in:

a. A separate interest-bearing trust account for the particular third person, client, or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

b. A pooled interest-bearing trust account with subaccountings that will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client or third person.

45.4(3) Accounts generating positive net earnings. If the client's or the third person's funds could generate positive net earnings for the client or third person, the lawyer shall deposit the funds in an account described in rule 45.4(2). In determining whether the funds would generate positive net earnings, the lawyer shall consider the following factors:

a. The amount of the funds to be deposited;

b. The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

c. The rates of interest or yield at the financial institution in which the funds are to be deposited;

d. The cost of establishing and administering the account, including service charges, the cost of the lawyer's services, and the cost of preparing any tax reports required for interest accruing to a client's benefit;

e. The capability of financial institutions described in rule 45.3 to calculate and pay interest to individual clients; and

f. Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

45.4(4) Directions to depository institutions. As to accounts created under rule 45.4(1), a lawyer or law firm shall direct the depository institution:

a. To remit interest or dividends, net of any allowable monthly service charges, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission;

b. To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of allowable monthly service charges deducted, if any, and the account balance(s) for the period covered by the report; and

c. To report to the Client Security Commission in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds. In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors. In the case of instruments that are honored when presented against insufficient funds, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, and the amount of overdraft. If an instrument presented against insufficient funds is not honored, the report shall be made simultaneously with, and within the time provided by law for, any notice of dishonor. If the instrument is honored, the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

[Court Orders April 20, 2005, and July 1, 2005, effective July 1, 2005]

Rule 45.5 Definition of "allowable monthly service charges." For purposes of this chapter, "allowable monthly service charges" means the monthly fee customarily assessed by the institution against a depositor solely for the privilege of maintaining the type of account involved. Fees or charges assessed for transactions involving the account, such as fees for wire transfers, stop payment orders, or check printing, are a lawyer's or law firm's responsibility and may not be paid or deducted from interest or dividends otherwise payable to the Lawyer Trust Account Commission.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.6 Lawyer certification. Every lawyer required to have a client trust account shall certify annually, in such form as the supreme court may prescribe, that the lawyer or the law firm maintains, on a current basis, records required by Iowa R. of Prof'l Conduct 32:1.15(a).

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.7 Advance fee and expense payments.

45.7(1) Definition of advance fee payments. Advance fee payments are payments for contemplated services that are made to the lawyer prior to the lawyer's having earned the fee.

45.7(2) Definition of advance expense payments. Advance expense payments are payments for contemplated expenses in connection with the lawyer's services that are made to the lawyer prior to the incurrence of the expense.

45.7(3) Deposit and withdrawal. A lawyer must deposit advance fee and expense payments from a client into the trust account and may withdraw such payments only as the fee is earned or the expense is incurred.

45.7(4) Notification upon withdrawal of fee or expense. A lawyer accepting advance fee or expense payments must notify the client in writing of the time, amount, and purpose of any withdrawal of the fee or expense, together with a complete accounting. The attorney must transmit such notice no later than the date of the withdrawal.

45.7(5) When refundable. Notwithstanding any contrary agreement between the lawyer and client, advance fee and expense payments are refundable to the client if the fee is not earned or the expense is not incurred.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.8 General retainer.

45.8(1) Definition. A general retainer is a fee a lawyer charges for agreeing to provide legal services on an as-needed basis during a specified time period. Such a fee is not a payment for the performance of services and is earned by the lawyer when paid.

45.8(2) *Deposit.* Because a general retainer is earned by the lawyer when paid, the retainer should not be deposited in the trust account.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.9 Special retainer.

45.9(1) *Definition.* A special retainer is a fee that is charged for the performance of contemplated services rather than for the lawyer's availability. Such a fee is paid in advance of performance of those services.

45.9(2) *Prohibition.* A lawyer may not charge a nonrefundable special retainer or withdraw unearned fees.

[Court Order April 20, 2005, effective July 1, 2005]

Rule 45.10 Flat fee.

45.10(1) *Definition.* A flat fee is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

45.10(2) *When deposit required.* If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account.

45.10(3) *Withdrawal of flat fee.* A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client's right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees.

[Court Order April 20, 2005, effective July 1, 2005]